DOCUMENT RESUME

ED 062 052 RC 006 082

TITLE	Rural Poverty and the Law in Southern Colorado. American Bar Foundation Series on Legal Services for the Poor.
INSTITUTION	American Bar Foundation, Chicago, Ill.
PUB DATE	71
NOTE	98p.; Reprinted from the Denver Law Journal, Vol. 47 (1970)
AVAILABLE FROM	American Bar Foundation, 1155 East 60th Street, Chicago, Ill. 60637 ($1.50)
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Cultural Factors; Demography; *Economically Disadvantaged; Lawyers; Legal Costs; *Legal Problems; *Rural Population; Social Background; *Spanish Americans; Spanish Speaking
IDENTIFIERS	Colorado

ABSTRACT

Legal problems of the rural poor in 2 counties of southern Colorado (Conejos and Costilla) are examined in this 1970 report. The empirical research for this project consisted of 3 phases: (1) determination (by questionnaire) of attitudes of rural Colorado attorneys toward the legal problems of the indigenous poor; (2) the use of unstructured interviews with local community leaders in the 2 counties to collect general information regarding the legal problems of local indigents, the extent to which they seek the assistance of nonattorney community leaders, and the effectiveness of these leaders in performing their self-designated tasks as "confidants" to the poor; and (3) the use of informal interviews with the rural poor to determine their experiences in recognizing and confronting problems having legal implications and their actual contact with an attorney. The report of this project contains a description of the demography and social background of the conflict that results when these systems fail. Major conclusions reported are that the formal legal structure is largely alien to the poverty class of the 2 counties; that there is a need for free legal services for the rural poor; and that the informal system can be a viable adjunct to effective legal aid in the area. (PS)

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preface

This reprint of a Denver Law Journal report on "Rural Poverty and the Law in Southern Colorado" is the eighth in the ABF series on Legal Services for the Poor. It is the second series piece on the problems of the rural poor—the first being the study by the staff of the Duke Law Journal (1969).

The Denver study was carried out under a grant from the ABF Law Review Research Program which is directed by Barlow F. Christensen of the Foundation staff. The observations and opinions expressed are those of the authors and should not be construed as necessarily representing those of the American Bar Foundation.

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reprinted from the denver law journal, vol. 47 (1970)

RURAL POVERTY AND THE LAW IN SOUTHERN COLORADO*

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* This study was conducted by the staff of the ***Denver Law Journal*** under a grant from the American Bar Foundation, to which the ***Journal*** expresses its sincere appreciation. The ***Journal*** would also like to acknowledge Dr. Gresham M. Sykes for his methodological advice and Thomas R. Sharp and Randolph M. Karsh for supervising the field research and drafting this report.

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INTRODUCTION

SEVERAL years ago, a book by Michael Harrington[1] stirred the conscience of America to the plight of the one-sixth of the nation's population living in poverty.[2] In a land of enormous economic prosperity, it seemed somehow incongruous that so many Americans could be without adequate food, clothing, lodging, and other essentials of mid-twentieth century life. President Johnson declared war on poverty, and the crisis of America's cities in the early and middle 1960's focused national attention on the ghetto ills that were traceable to abject poverty. Almost as a stepchild of the urban crusade, poverty in rural America captured only limited attention, even though every major study of urban poverty concluded that the mass exodus of Americans from rural areas to the cities exacerbated if not spawned many of the urban problems. For instance, the President's Advisory Commission on Rural Poverty stated in its 1967 report:

> It is a shocking fact that in the United States today, in what is the richest nation in history, close to 14 million rural Americans are poor, and a high proportion of them are destitute. By their poverty they are deprived of freedom to share in our economic abundance.
>
> We can no longer permit public policy to ignore the rural poor. For if we do, we shall see a continuing movement of rural people to our central cities. As the summer of 1967 illustrated, the slums and

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[1] M. HARRINGTON, THE OTHER AMERICA: POVERTY IN THE UNITED STATES (1962).

[2] In December of 1965, the Office of Economic Opportunity estimated that 34,300,000 Americans were included in its definition of poverty. FACTS ON FILE, INC., WAR ON POVERTY 2, 3 (1967).

> ghettos of the city breed hatred and violence, which is no solution to the problems of either city or country.[3]

In the legal profession, legal aid for the urban poor increasingly drew the attention of judges, lawyers, legslators, and law students; and the Legal Services Division of the Office of Economic Opportunity,[4] established in 1965, began funding neighborhood law offices in low-income ghetto areas.[5] The first efforts were thus aimed at extension of free legal services to indigent residents in urban ghettos, and the need for similar services in rural America was only belatedly recognized.[6]

Extensive field studies of the legal problems of the urban poor have been made in Denver, Colorado,[7] and Peoria, Illinois.[8] Only very recently, however, have similar analyses been performed in a rural setting.[9] With the generous financial assistance of the American Bar Foundation, the *Denver Law Journal* undertook in 1968-69 an extensive empirical study of the legal problems of the rural poor in two selected counties in the San Luis Valley of southern Colorado, Conejos and Costilla Counties. While rural poverty permeates much of the state, the worst conditions are found in these two counties, and the characteristics of the area — a largely Spanish-American[10] population living in and around small villages and wedded to an agricultural society facing severe economic depression — are typical of rural poverty in many of the Western States.

The paramount purpose of this empirical project was to ascertain *how* the rural poor in the two sample counties react to and resolve legal problems confronting them. The authors of this study made no attempt to define, categorize, enumerate, or record a statistical frequency of occurrence among the indigent population for every type of legal problem. Not only has that task been commendably performed elsewhere,[11] but the limitations of manpower resources and time militated against a frontal assault on all aspects of the legal needs of the rural poor. Rather, an attempt was made to investigate and to analyze the *processes* of legal problemsolving among the rural poor and the relationship of those processes to the formal legal system as it operates in the two sample counties under observation.

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[3] THE PEOPLE LEFT BEHIND, A REPORT BY THE PRESIDENT'S NATIONAL ADVISORY COMMISSION ON RURAL POVERTY 3 (1967) [hereinafter cited as THE PEOPLE LEFT BEHIND].

[4] The legal services programs of the OEO are authorized by the Economic Opportunity Act of 1964, 42 U.S.C. §§ 2781-91 (1964), *as amended* 42 U.S.C. § 2809 (Supp. 1968).

[5] *See* Note, *Beyond the Neighborhood Office — OEO's Special Grants in Legal Services,* 56 GEO. L.J. 742 (1968); Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor,* 80 HARV. L. REV. 805 (1967). *See generally* P. WALD, LAW AND POVERTY (1965).

[6] One of the first programs in a rural area was the "Judicare" legal aid system established in 26 rural Wisconsin counties. *See* Schlossberg and Weinberg, *The Role of Judicare in the American Legal System,* 54 A.B.A.J. 1000, 1001 (1968). *See also* Spitz-Jensen & Laitos, *A Critique — Lawyers, Rural Problems, VISTA and Failure,* 15 STUD. LAW. J. 4 (March 1970); WIRTZ, *Youth's Protest: Individualism & the Role of the Lawyer,* 40 U. COLO. L. REV. 1 (1967).

[7] Skyes, *Legal Needs of the Poor in the City of Denver,* 4 LAW & SOC'Y REV. 255 (1969) [hereinafter cited as Sykes].

[8] American Bar Foundation, Peoria General Community Survey (1966). (Unpublished — available from the A.B.F.)

[9] Note, *The Legal Problems of the Rural Poor,* 1969 DUKE L.J. 495.

[10] The term "Spanish-American" is employed throughout this study to refer to the separate and identifiable cultural group which is also variously referred to — both in the literature and by certain segments of the group itself — as Hispano, Chicano, Mexican, Mexican-American, and Spanish-surnamed. *See,* LA RAZA: FORGOTTEN AMERICANS xiv, xv (J. Samora ed. 1966).

Any accurate responses to this central inquiry necessarily required an evaluative disposition of several secondary questions: First, how does the formal legal system and the rural bar respond to the various types of legal problems encountered by the rural poor? An attempt was made to evaluate the response in terms of the resources of the legal community itself and in terms of the effectiveness of the response in resolving the various types of legal problems faced by the rural poor. Second, as an alternative to the formal system, how do informal processes operate to resolve the problems of the rural poor? The answer to this question involved an analysis of informal problemsolving by the indigents themselves and by "confidants" who are known to and trusted by the indigent residents of the rural communities. Finally, and most important, to what extent are the solutions employed by the indigent class in the sample counties effective in resolving their legal problems?

This examination of the formal and informal legal systems indicates that the current solutions to legal problems employed by the rural poor are either inadequate or insufficient. The data suggest the need for a modernization and integration of the existing systems with a view towards furnishing the rural poor with the legal tools needed to deal effectively with their environment. Before presenting the results of the inquiry, however, a description of the methodology utilized and the demographic and social background of the two-county area surveyed is in order.

I. METHODOLOGY

The empirical research for this project consisted of three separate phases. The first was an effort to determine the attitudes of rural Colorado attorneys toward the legal problems of their indigenous poor. Unstructured interviews with local community leaders in Conejos and Costilla Counties comprised the second phase of the project, which was conducted contemporaneously with the third phase of the project — the survey of the rural poor themselves.

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[11] *See* Note, *supra* note 9.

At the outset of preparation of the field research of this project, a lengthy and detailed questionnaire was drafted. The written questions were so framed as to discover the types of legal problems confronting the poor residents of the sample counties and the reactions of each indigent questioned to such enumerated problems. This questionnaire was generally modeled after those used in the Peoria study[12] and the Denver study.[13] Following a pilot test in the Denver area, it was determined that a structured questionnaire approach was not well suited to the particular goal of this project; it was too rigid, and it limited the full exploration of the problemsolving processes of the indigent class. Since the selected emphasis for the empirical research vitiated the necessity for accurate statistical data on *what* legal problems are encountered by the rural poor, individually or as a class, in favor of *how* any specific legal problem is typically resolved, if at all, it was felt that the administration of questionnaires — in particular, the simultaneous recordation of responses by the interviewing team — would inhibit rather than encourage in-depth inquiry. Moreover, without an a priori knowledge of all possible legal problems that might be named, especially any particularly parochial to residents of the sample counties, any attempt to draft an all-inclusive questionnaire sufficiently detailed to insure that mention would be made of all problemsolving techniques and resources would result in lengthy, burdensome, and stilted interviews. It was for this reason that the field research described below was based on a generally unstructured, informal interviewing technique.

Before the field research itself was undertaken, however, an attempt was made to determine the attitudes of rural Colorado attorneys generally toward the legal problems of their indigenous poor.

The tool selected for this inquiry was a formal, structured questionnaire sent to all members of the Colorado Bar Association residing in selected communities representing a cross-section of rural Colorado. More than 20 communities, ranging in population from 500 to 15,000,[14] were selected, including at least one community from every geographically defined rural area in the state. All members of the Colorado Bar Association in the San Luis Valley received the questionnaire. A total of 105 questionnaires were mailed and 51 were returned. The questionnaire is printed in full as an Appendix to this article, and the statistical conclusions drawn from the responses are interspersed throughout the remainder of this report.

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[12] *See* Peoria Survey, *supra* note 8.

[13] *See* Sykes, *supra* note 7.

[14] Almost all of the communities were of less than 5,000 population, but a few larger towns were selected in order to insure that the sample included attorneys from all rural areas of the state.

Unstructured interviews with local community leaders in Conejos and Costilla Counties comprised the second phase of the project. Among those so interviewed were businessmen, priests, public school officials, judges, attorneys,[15] OEO personnel (including VISTA volunteers), middle-class farmers and ranchers, and state and local governmental officials. The term "community leaders" is used to denote that class of residents within the two counties whose income, age, education, hierarchical social position, or political power invests them with an aura of influence vis-a-vis the members of the impoverished class. This influence — and the acquisition of knowledge by these local leaders relating to problems confronting the indigenous poor — is directly proportional to the degree to which the community leader functions as a counselor, advisor, and repository of information to the indigent citizenry. The aim of this second project phase was to probe the class of community leaders for general information respecting the legal problems of local indigents, to determine the degree to which the poor seek out and utilize the assistance of nonattorney community leaders when confronted by legal problems, and finally to subjectively assess the effectiveness of these leaders in performing their self-designated tasks as confidants[16] to the poor.

The interviewing sessions were conducted by two-man teams from the *Denver Law Journal*. Each interviewed leader was initially informed that his interviewers were law students at the University of Denver conducting a study of the legal problems of the rural poor in Colorado. The interviews were informal and conversational, the object being to maintain flexibility in the course of the sessions so that specific answers could beget still further specific inquiry and all avenues of exploration could remain open. No notes were taken during the interviews. Instead, each interviewing team recorded its observations on paper following each interview, and these notes were later expanded into final tape recorded reports.

As an initial impetus, each community leader was asked a few general questions to elicit his awareness of legal problems confronting the poor. For attorneys and judges the ensuing inquiries adhered generally to the broad outlines of the attorney questionnaire. At an appropriate point in the conversations, however, each attorney or judge was specifically asked to subjectively evaluate the existing legal services in terms of their responsiveness to the legal needs of the rural poor. The scope and direction of interviews with all other local leaders was related to the respondent's occupation and community status; questions asked of businessmen, for instance, would differ in large degree from those asked of priests. The central theme of each interview, however, was a probe of the respondent's participatory role in promoting legal problemsolving for the poorer residents of the community. Specifically, each leader was asked whether he had recently been approached by any local resident seeking his advice. If the response was affirmative, the interviewers asked whether the resident was an indigent[17] and what was the nature of the problem. If the description of the problem appeared to have legal overtones,[18] the leader was asked to detail his response to the request for advice. At this juncture, the interviewers mentally noted whether the respondent had referred the indigent to an attorney, offered his own advice, or recommended some other source of assistance. Finally, each leader was examined about his knowledge of the availability of free legal services in the immediate or surrounding area and the existence of other aid programs for the poor, including those established by state and federal governments.

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[15] In addition to the elderly attorney still practicing in one of the two counties (*see* text accompanying note 118 *infra*), several lawyers in adjacent counties to the north were interviewed.

[16] The term "confidant" is defined and the role of the "confidant" is discussed at some length in § IV(A) *infra*.

With few exceptions, the community leadership was responsive and cooperative. Often, VISTA volunteers or other previously interviewed community leaders served to introduce an interviewing team to still other leaders, thereby encouraging a favorable initial rapport between the interviewers and respondents. Indeed, most subjects readily acceded to sessions scheduled on short notice, with the informal atmosphere often generating a plethora of narratives depicting local color but of little substantive value to this study. On the other hand, much of the really pertinent and valuable information solicited during these interview sessions may not have been obtainable through a structured questionnaire approach. A few respondents were wary of the subject matter inquiry and hesitated to openly express their opinions or to fully detail specific information, apparently because of fear of disclosure to the local community. Assurances of anonymity by the interviewers generally produced a fruitful interview, although the latent hesitancy could not be fully dispelled. The information subsequently obtained was evaluated in light of the respondent's attitude. Additionally, two local government officials were openly hostile toward the interviewers, regarding them as nosy student agitators from the big city who were trying to stir up trouble among the local poor. When confronted by such an attitude, the interviewers courteously terminated the sessions.

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[17] Unless specifically requested, no attempt was made by the interviewers to define the term "indigent." Instead, reliance was placed on the community leaders' general awareness of who among local residents would be denominated as improverished. The reasons for this reliance were threefold: First, the leaders were never asked to name the individuals who sought their advice; second, even if names were mentioned, the process of independently corroborating the accuracy of poverty classifications would have been unduly time-consuming and burdensome; and finally, it was felt that any incidence of inaccuracy by those who are presumed to know their own community and neighbors would be minimal.

[18] At this stage of the questioning the interviewers carefully refrained from positing leading questions; that is, the questions were so framed as to avoid suggesting a legally oriented response. For example, the interviewers rather than the respondent determined whether any problem presented for advice or resolution to the particular leader possessed legal overtones, hopefully mitigating against any pat — and perhaps untruthful — response that all "legal" problems were referred to attorneys.

The third phase of this project, the survey of the rural poor themselves, utilized the same technique as that for the community leadership survey — informal and unstructured interview sessions conducted by student interviewers from the *Denver Law Journal.* In each of the two sample counties, two communities, one with a population of approximately 1,000 and the other with approximately 300 residents, were selected as target areas. A total of approximately 100 indigent residents were interviewed in these four areas.[19]

Most of the respondents interviewed were selected by references from local VISTA volunteers or welfare caseworkers who were well acquainted with many local impoverished residents, and whose aid in introduction to prospective respondents was invaluable.[20] Similarly, several interviews followed from references to local indigents by businessmen, priests, and others, and a few respondents furnished leads to still other prospective respondents. Thus, the selection of the sample was essentially accidental,[21] although an attempt was made to insure a fairly representative choice.

Most of the interviews were conducted in a respondent's home, although a few sessions with working men were held in local cafes or even bars, and one particular gathering of 10 women serving as an advisory "outreach" group to a local Community Action Program were interviewed *en masse* in the CAP office. Where possible, the interviewers arranged sessions with the husband of a married couple. The length of the interviews varied, but few exceeded one hour. With few exceptions, prospective respondents were courteous, cooperative, and helpful, although it became clearly evident early in the field research that many indigents in this particular region were quite sensitive about their impoverished condition. The Spanish-American indigent in the sample counties is still basically a proud individual, and, particularly with the male members of the cultural group, the degrading aspects of poverty cut deeply into the male ego — or *machismo*, as it is called.[22] Consequently, the interviewers avoided as much as possible any direct inferences or references to poverty which might have alienated the respondent. Each respondent was informed only that his interviewers were students at the University of Denver Law School studying the legal problems of area residents.[23]

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[19] A small number of indigents residing on farms in the outlying areas of the two counties were also interviewed. These respondents were selected on the basis of their being known by VISTA volunteers. Since the vast majority of the indigents in the sample counties are nonfarm residents, *see* note 37 *infra,* the principal interviewing was directed toward indigents living in the target area communities.

[20] The VISTA volunteers or welfare caseworkers sometimes sat through the interview sessions, although they were asked in advance not to volunteer any information nor to assist the interviewees in responding to questions posed. In short, they were requested to maintain a "silent" presence.

[21] Technically, an accidental sample is a nonprobability sample in which one simply reaches out and takes the cases that fall to hand, continuing the process until the sample reaches a designated size. C. SELLTIZ, M. JAHODA, M. DEUTSCH & S. COOK, RESEARCH METHODS IN SOCIAL RELATIONS 516 (Rev. ed. 1959). The three principle criticisms of this technique relate to problems of evaluating bias, *id.,* problems of applying statistical analysis to the data, and problems of generalizability. *Id.* at 537-45. However, the purpose of this study was not to discover valid statistical relationships, but rather to gain insight into and analyze a particular process within a particular set of communities. The generalizability of the findings should be considered according to specific circumstances too numerous to mention here. A comparison between the results of this study and those of the Duke study, *supra* note 9, may be be helpful in this regard. *See* note 180 *infra.*

About 90 percent of the respondents interviewed were Spanish-American, the remainder being Anglo. Their ages ranged from 19 to 77; most were middle-aged. All respondents had lived in their particular local community for at least 6 months, and a substantial majority had lived in the general area since childhood. About 20 percent had completed high school, and these were principally women. With few exceptions, the indigents interviewed stated that they affiliated, regularly or irregularly, with the Roman Catholic church.[24] Each respondent was asked at some appropriate point early in the session to state the size of his or her family residing in the home and to roughly estimate the annual earnings of the family. Where answers to these questions clearly revealed that the respondent could not be classified as an indigent,[25] the sessions were terminated.

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[22] The word defines a Mexican-American cultural trait which is multifaceted, and whose exact meaning cannot be translated. The following characteristics are included in the meaning: (1) Masculinity and manliness; (2) Ego; (3) Honor and pride. The aphorism *"a lo hecho-pecho"* (to face that which is done) is used to indicate a *machismo* attitude. *See also* La Raza: Forgotten Americans 145 (J. Samora ed. 1966).

[23] On occasion, respondents asked an interviewing team from whence came the money to support the field survey. During the summer and fall of 1968, unconfirmed rumors circulated among the citizenry of Costilla County that a study of the town of San Luis for the purpose of ascertaining its tourism potential had been heavily funded with federal tax money and the participants in the project had frittered away this funding by high living and expensive travel between Boston, Massachusetts and San Luis. The project's conclusions are found in a rather short report, The Lazy Eight: OEO Project San Luis, A Proposal to Restore Historic San Luis, May 1, 1967 (unpublished proposal available from the Lazy Eight, 96 Mt. Auburn St., Cambridge, Mass.) These rumors engendered a latent hostility to "outsiders" who might spend government funds while "using" the indigenous populace as subjects for neat academic reports, while the real needs of the impoverished class — jobs, income, food — remain unsatisfied. Consequently, any respondent who queried his interviewers about this topic was told that there was outside funding for travel and incidental expenses, but the amount so allocated was small indeed and came from a private, rather than a governmental, source.

[24] This personal and background data was obtained from observation and simple questions asked at some point in the conversation — generally, very early in the session.

The sessions themselves were conversational and informal. The questions posed, other than those dealing with background data, were of two general types.

The first category of questions was flexibily designed to probe *actual* experiences of each respondent in recognizing, confronting, and reacting to problems having legal implications.[26] A series of broad, general questions were initially framed in order to stir the memory of the respondent and to delineate the boundaries for the ensuing discussion. Each respondent was asked whether he or any member of his family had ever encountered "problems" with (1) the local welfare agencies, (2) public school officials, (3) employers, (4) landlords, if any, (5) local merchants in the purchase of goods or commodities, (6) traveling salesmen, (7) local or state police officers or sheriff's deputies in matters criminal, (8) finance agencies in the

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[25] An accurate definition of the term "poverty" is difficult.

> "Poverty" is controversial word. Not everyone agrees on what it means. This applies to experts as well as laymen. In the opinion of the Commission, poverty is partly inadequate income, but it goes much deeper than that. Poverty afflicts the mind and the spirit as well.

THE PEOPLE LEFT BEHIND, *supra* note 3, at 7. Low income is widely employed as a poverty index. An individual is considered poor if his personal income or total family income inadequately provides for his family's subsistence. The poverty line is said to be the minimum level of income needed to provide the individual and his family with the kind of living standard that society considers a basic human right. *Id.* Translating this concept into a dollar and cents figure of annual income, however, has engendered varied opinions. *See generally* POVERTY IN AMERICA: A BOOK OF READINGS (L. Ferman, J. Kornbluh, & A. Haber eds. 1965). Certainly, the poverty line must be relative, depending upon geographical location, number of members in the family, and a comparison of the local standard of living with that in other geographic areas. "The figure of $3,000 as the poverty line is useful as a rough approximation, though it cannot be applied universally or indiscriminately." THE PEOPLE LEFT BEHIND, *supra* note 3, at 7.

Although acknowledging the considerable statistical literature on poverty levels in general, *see, e.g.,* M. ORSHANSKY, THE POOR IN 1965 AND TRENDS, 1959-65 (U.S. Dep't of HEW, Feb. 16, 1967); M. ORSHANSKY, RECOUNTING THE POOR — A FIVE YEAR REVIEW (Social Security Bull. 1966); H. LAMALE, POVERTY: THE WORD AND THE REALITY, Monthly Labor Review, July 1965, at 822-27, the revised income poverty guidelines of the OEO were adopted for purposes of this study:

Family Size	Nonfarm	Farm	Family Size	Nonfarm	Farm
3	$2,500	$1,700	9	5,800	4,000
4	3,200	2,200	10	6,300	4,400
5	3,800	2,600	11	6,800	4,700
6	4,200	3,000	12	7,300	5,100
7	4,700	3,300	13	7,800	5,400
8	5,300	3,700			

OEO Instruction # 6004-1 (Dec. 27, 1968).

[26] As in the interviews with community leaders, the interviewing team carefully refrained from asking leading questions suggesting a solution through traditional legal resources, which might thereby encourage the respondent to prevaricate in order to show his or her ability to recognize legal problems and unhesitancy in going to an attorney's office. The determination of a problem as involving legal ramifications was mentally noted by the interviewers.

securing of loans, (9) any other governmental official, such as the county tax assessor, (10) the respondent's spouse or children in matters relating to divorce or child custody, and (11) any other person — neighbors, friends, relatives, or fellow community residents — as to possible squabbles over money, inheritances, boundary disputes, nuisances, vandalism, and so forth. If a particular problem in any area was mentioned, further probing followed in order to determine the nature of the controversy, how the respondent or family member reacted to it, and the ultimate disposition, if any.

The second broad category of questions dealt with any actual personal contact which the respondent may have had with an attorney. If the particular respondent indicated that he or she or a member of the family had ever seen an attorney concerning any problem (other than as a defendant in a criminal matter) the particular incident, and others that may have followed, were probed in depth. Included were questions such as (1) whether the respondent was referred by a third party to the attorney, and if so, by whom, (2) what was the charge for services rendered and what was actually paid, (3) whether the problem for which legal advice or assistance was sought was actually solved to the satisfaction of the respondent, (4) whether the respondent ever returned to the same attorney with any subsequent problem, and (5) what the respondent subjectively thought about the attorney contact. The responses made were mentally noted and then recorded on paper following the session, to be further expanded on tape that evening.

II. DEMOGRAPHY AND SOCIAL BACKGROUND

The initial impression of a visitor to the two-county area under study is one of sleepy small town, 19th century rural Americana, where almost everyone is related to everybody else[27] and the Catholic Church is the dominant fixture in the community. Indeed, the Spanish-American populace which resides there is a proud people — proud of their long heritage and proud of their language. Almost all of the Spanish-American residents, particularly in the older age groups, are bilingual, speaking not only English but a form of Spanish substantially unchanged since the 16th century Spanish settlement of the

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[27] A comprehensive study of the Lariat Barrio (a Spanish-American low-income settlement located on the fringe of Monte Vista in Rio Grande County only 13 miles north of Conejos County) revealed that 91 of 150 families were closely interrelated, and 39 additional families were interrelated to a distinguishably lesser degree. Only 20 families had no other relatives in the community. E. Ahrens, A Socioeconomic Status Study of A Spanish-American Barrio in Monte Vista, Colorado 48, May, 1968 (unpublished master's thesis on file in Adams State College Library, Alamosa, Colorado) [hereinafter cited as E. Ahrens]. Although no similar statistical study of the familial interrelatedness in the Spanish-American population of Conejos and Costilla counties has been made, informal estimates made during the field survey were of proportions similar to the Lariat study.

San Luis Valley, but including a smattering of words transmogrified from English.[28] But underneath this placid facade is a deeply rooted "culture of poverty"[29] incapable of measurement by mere statistical characterization. It is a condition, a feeling of hopelessness instilled in those caught up in the widening circle of economic degradation. It has many causes, the sum total of which etches a definition of the quality of rural life.

> The provision of medical, dental, and general health services are among [the severely limited services available in rural communities], as are cultural advantages such as libraries and museums which provide the incentive to continued individual developent. Also less available are the entertainment and recreational advantages of urban living. While it is certainly reasonable to suggest that many of these "advantages" are compensations for the tensions and pressures of urban life and that the qualities of rural life may outweigh their absence, it is useful to remember that the complex organization of the industrial society is the force which has made it possible for many to attain an economic sufficiency. Without the necessary familiarity with this type of society, much of the rural population in America finds itself bound to old ways. The old ways are often the ways of marginal living and lifelong deprivation.[30]

In Conejos and Costilla counties the chief provocation of this "culture of poverty" is the depressed agricultural economy. With the unemployment rate already much higher than the national average and increased agricultural mechanization threatening to spiral it even higher,[31] and with the future economic picture as bleak as it is,[32]

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[28] A brief historical account of the settlement of the San Luis Valley is presented in E. Ahrens, *supra* note 27, at 8-9. With regard to the Spanish language heritage, see generally LA RAZA: FORGOTTEN AMERICANS 5-24 (J. Samora ed. 1966).

[29] THE PEOPLE LEFT BEHIND, *supra* note 3, at 8-9.

[30] Gibson, *Rural Poverty in the Northeast,* 15 KAN. L. REV. 469, 473 (1967).

[31]

> Part of the plight of the rural Hispano in Colorado has been the mechanization of farms and ranches, leaving few permanent, year-round jobs available. One farm near Fort Morgan, Colo., employed 22 in 1947 on a year-round basis. Last year, that same farm employed three.
>
> In other areas, it has become a tougher problem.
>
> At Del Norte [the seat of Rio Grande County], in southwestern Colorado, a large community within the town has been built up by deposed farm and ranch workers.

Huber, *Rural Hispanos Poorest in State,* The Denver Post (Special Supp.), May 13, 1969, at 7, col. 3-4.

[32] Other than increased state and federal aid, funneled either through the present welfare system or through some other conduit which would by pass or replace the creaking machinery of the welfare state, the only localized hope for economic improvement in the region lies in increased industrialization or tourism.

Industrial parks have been created near the outskirts of Alamosa and Monte Vista in Alamosa and Rio Grande counties. The Lazy Eight: OEO Project San Luis, A Proposal to Restore Historic San Luis, May 1, 1967 (unpublished proposal available from the Lazy Eight, 96 Mt. Auburn St., Cambridge, Mass.) At present, however, nothing approaching a major industry sufficient to ease the high unemployment and provide year-around jobs has located in either site, although a skiwear manufacturer considered, then abandoned, a plan to locate a skiwear clothing plant near Monte Vista in 1968. Neither Conejos nor Costilla counties have any zoned industrial areas.

Tourism, particularly among sportsmen and recreational enthusiasts, continues to a feeling of helplessness is engendered which has been capsulized by one Spanish-American woman: " 'We can't get ahead here,' says Mrs. Gomez. 'There is no way for us to improve. Our only hope is to move on.' "[33]

A. *Geography and Population*

Conejos and Costilla counties lie adjacent to each other in south central Colorado. As the two most southern counties in the San Luis Valley,[34] they are bounded by steep mountain ranges to the east and west and by the State of New Mexico to the south. Several small communities and villages dot the landscape in the two counties, principally along the few major highways in the region.[35] Almost all of the residents in the two counties surveyed who can be classified as living in poverty[36] reside in or near these small communities, rather than on farms, working as seasonal farm laborers.[37]

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burgeon in the San Luis Valley, though notably not in the poverty-stricken areas of Conejos and Costilla counties. One study of Costilla County noted that

> [o]ne of the very real possibilities for economic development in this county is that of tourism. In developing this industry they should review their historic resources, cultural uniqueness, historic buildings, and other physical elements, scenic areas, reconstruction possibilities, etc. that may be made attractive . . . Costilla county is rich in tourism resources, but it will require a high level of imagination, community consciousness, and cooperative effort of all the people, as well as considerable outside capital to develop it. If they do, however, it will provide increased income for those now in business and many new jobs for others.

Andrews, *Family Composition and Characteristics of an Economically Deprived Cross Cultural Rocky Mountain Area,* ROCKY MT. SOC. SCI. J. 122 (April 1966). For a detailed proposal for re-creation of the original town of San Luis, originally settled in 1651, see The Lazy Eight: OEO Project San Luis, *supra.*

[33] Huber, *supra* note 31, at 7, col. 2.

[34] The San Luis Valley region is an area in south central Colorado encompassing 8,202 square miles of land. It includes, in addition to Conejos and Costilla counties, the counties of Alamosa, Mineral, Rio Grande, and Saguache. The Valley is part of an ancient lake bed, forming a level surface which rises gradually into steep mountains to the west, east, and north, ranging in elevation from 7,000 to 14,317 feet. The region represents 7.9 percent of the land area of Colorado — an area roughly equal to the State of Massachusetts — but the population of 39,600 in 1964 represented only 2.0 percent of the total state population. Of this land area, nearly 52 percent is National Forest land, 41 percent is agricultural and grazing land on the floor of the Valley, and 2.4 percent is mineral land. COLORADO YEARBOOK 1962-1964, at 833 (1964). For a lengthy and detailed history of the San Luis Valley, from early man to the present, and including an accurate analysis of the present occupance patterns, see D. Lantis, The San Luis Valley, Colorado: Sequent Rural Occupance in an Intermontane Basin (1950) (unpublished doctorate thesis on file in Adams State College Library, Alamosa, Colo.). *See generally* 1 SAN LUIS VALLEY HISTORIAN, Nos. 1-3 (1968-69); H. Skogland, A History of the San Luis Valley (1941) (unpublished master's thesis on file in Adams State College Library, Alamosa, Colo.).

[35] In order to preserve the confidentiality of interviews in the two-county region, names of communities will not generally be given in this report.

[36] *See* note 25 *supra.*

[37] In detailing population composits of various counties in Colorado, the Office of Economic Opportunity stated: "Among the poor population, the largest proportion of families were white residents of rural areas, *though not occupying farms.* In 1960, this category of poor families represented 88.2% of all poor families in Conejos County." For Costilla County, the estimate was 87.1 percent. OEO COUNTY REPORTS (unpaginated) (1968) (emphasis added).

The counties are characterized by a low population density. While Conejos County occupies a land area of 1,274 square miles, its population in 1966 was estimated to be 8,300, down from 8,428 in 1960. Costilla County occupies 1,220 square miles, and the population in 1966 was estimated to be 3,700, down from 4,219 in 1960. Thus, the density of population in 1966 was 6.5 persons per square mile in Conejos County and 3.0 in Costilla County, representing a population density lower than 86 and 92 percent respectively of all counties in the United States.[38]

The population of the two-county area can also be described as primarily Spanish-American. Conejos and Costilla counties have the highest concentration of Spanish-American residents in Colorado[39] — 72.6 percent of the total population in Costilla County and 53.1 percent in Conejos County.[40]

B. *Economic and Labor Conditions*

The economy of the entire San Luis Valley, including the two counties under study here, is dominated by farming and ranching. The Valley is principally noted for its commercial fresh vegetables, potatoes, malting barley, sheep, and cattle.[41] In 1964, 53.4 percent of the total acreage in Conejos County and 52.8 percent in Costilla

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[38] The statistics are drawn from COLORADO YEARBOOK 1962-1964, at 842, 846 (1964) and OEO COUNTY REPORTS (1968) (unpaginated). Historically, the population trends of the two counties can be seen from the following chart:

	Conejos County	Costilla County		Conejos County	Costilla County
1870	2,504	1,779	1920	8,416	5,032
1880	5,605	2,897	1930	9,803	5,779
1890	7,193	3,491	1940	11,648	7,533
1900	8,794	4,632	1950	10,171	6,067
1910	11,285	5,498	1960	8,428	4,219

A. Carson, Summary of the Second Phase of the San Luis Valley Project, Lazy Eight San Luis Valley Project, Monte Vista, Colorado, April 1, 1967 (unpaginated) (unpublished statistical summary available from the Colorado Migrant Council, Denver, Colorado) [hereinafter cited as Lazy Eight Project].

[39] The rural Spanish-American represents the state's largest single minority ethnic group — about 100,000 in number, plus more than 80,000 in the Denver metropolitan area. Huber, *supra* note 31, at 7, col. 1. But, "the greatest concentration of Spanish-surnamed citizens by county exists in the southern part of Colorado . . . ." THE STATUS OF SPANISH-SURNAMED CITIZENS IN COLORADO, REPORT TO THE COLORADO GENERAL ASSEMBLY 7 (1967) [hereinafter cited as ASSEMBLY REPORT].

[40] ASSEMBLY REPORT, *supra* note 39, at 8-9.

[41] The value of total crop production in Contejos and Costilla counties over the most recent 3-year period for which statistics are available is as follows: Conejos — $5,912,820 in 1965, $6,318,107 in 1966, and $4,956,028 in 1967; Costilla — $4,126,140 in 1965, $4,714,852 in 1966, and $3,146,215 in 1967. In 1966 there were 27,800 head of cattle and 47,100 head of sheep on farms and ranches in Conejos County. In Costilla County the figures for the same year were 8,300 and 15,600, respectively. COLORADO DEP'T OF AGRICULTURE, COLORADO AGRICULTURAL STATISTICS, BULL. NO. BUL-1-67, at 8, 18, 30-32, 74-75 (1967); COLORADO DEP'T OF AGRICULTURE, COLORADO AGRICULTURAL STATISTICS, BULL. NO. BUL-1-68, at 7-8, 15, 31, 71, 73 (1968) [hereinafter cited as AGRICULTURAL STATISTICS — 1968].

County was in farmland. The larger farming operations are found in greater abundance in Conejos County than in Costilla County, and consequently a proportionately greater number of indigent Spanish-Americans live and own small farms in the latter.[42] Of much lesser importance are other industries and trades in the area. Neither county has a major, nonagricultural industry. Conejos County has one flour mill, two meat packing plants, and three perlite mills. None are of significant size. Several lumber sawmills are located in each county,[43] near the mountains on both sides of the Valley, but, again, none are

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[42]

> Agriculture in the south and east central sectors of [Costillo] county is largely in small plots many of which do not qualify under the census definition of a farm. This division is associated with the original Spanish type settlement patterns of the area. Some of these small units have been consolidated into farms, but many small pieces still remain and are held by descendants of the original settlers.

Andrews, *supra* note 32, at 124. The following chart shows the acreage and sales of the farms in Conejos and Costilla counties.

	Conejos County	**Costilla County**
TOTAL FARMS	421	191
IN ACRES	1,030.3	2,148.0
AVERAGE SIZE OF FARMS		
NUMBER OF FARMS IN SIZE:		
50 or less acres	46	69
50 to 99 acres	40	25
100 to 259 acres	108	34
260 to 499 acres	86	23
500 to 999 acres	67	14
1,000 or more acres	74	26
FARMS BY ECONOMIC CLASS		
COMMERCIAL FARMS	329	117
Class I (sales of $40,000 or more)	49	15
Class II (sales of $20,000 to $39,999)	34	6
Class III (sales of $10,000 to $19,999)	58	11
Class IV (sales of $5,000 to $9,999)	61	22
Class V (sales of $2,500 to $4,999)	60	28
Class VI (sales of $50 to $2,499)	67	35

Lazy Eight Project, *supra* note 38. The high figure for the average acreage of farms in Costilla County is the result of "three large ranches extend[ing] along the east and north sides of the county. These ranches include a segment of the Sangre de Cristo mountain range and some valley land and occupy between 300,000-400,000 acres." Andrews, *supra* note 32, at 124.

The small plots tilled by indigent Spanish-Americans in Costilla County "are of little value and even less profit." Huber, *supra* note 31, at 8, col. 2. Furthermore, the farming background of the population in Costilla County has been steadily declining in recent years, a fact explicable by the increased mechanization and consolidation of farms coupled with the generally depressed farm economy. Fewer young people raised on farms are willing to eke out a bare subsistence from the land as their parents have done. Andrews, *supra* note 32, at 132.

[43] Lazy Eight Project, *supra* note 38.

of significant size. Each community in the region has a few retail and service trade businesses. In 1962 only 476 persons were employed in all manufacturing, wholesale, retail trade, and service trade industries in the two counties.[44]

The prosperity of the San Luis Valley is heavily dependent upon the prevailing economic condition of its major industry — agriculture. In recent years that condition has been anything but rosy. The smaller, less efficient farms have found themselves in a precarious position as the economic price-cost squeeze that has affected the entire nation's farming industry continues unabated. The resulting consolidation and increased mechanization of farms have wrought social upheaval, dwindling populations, and fewer and fewer jobs.

> Mechanization will benefit [the Western farming] region as a whole, but in the short run major adjustments are required for individuals and families with skills for which demand is being curtailed sharply. The implications for these people are underemployment and continued low incomes. Thus, mechanization and increased productivity often have the immediate effect of threatening the livelihood of those least able to withstand such shocks. Eventually, they may be absorbed in other sectors of the economy, but this alternative offers little comfort to people with comparatively little education, few skills, and limited resources presently at their disposal.[45]

In the San Luis Valley, even large farms have been brought to the edge of financial disaster. In a *Denver Post* article of November 1968,[46] leading farmers and ranches in the Valley uniformly expressed the view that the status of the local agricultural economy was not quite as austere in 1968 as in the severe slump of 1967, but that the price-cost squeeze still hurts. All indicated that "something" must be done soon to improve the economic picture. The cause of the outcry is the very low profit margin for farmers and ranchers. The prices for crops and livestock on the open market fluctuate markedly from month to month and year to year,[47] but, in general, these prices have not risen as rapidly as production costs and wages. For example, one life-long potato grower in the Valley stated that the cost of producing 100 pounds of potatoes was then about $2.50. Another dollar is added for processing, so that a grower must receive

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[44] Forty-seven were employed in Costilla County and 429 in Conejos. COLORADO YEARBOOK 1962-1964, at 843, 847 (1964).

[45] Mittelbach & Short, *Rural Poverty in the West — Status and Implications,* 15 KAN. L. REV. 453, 460 (1967). *See also* note 31 *supra.*

[46] Baker, *San Luis Valley Outlook Termed Not Rosy,* The Denver Post, Nov. 24, 1968, at 31, col. 1.

[47] The fluctuation in prices brought by potatoes sold at market is amply shown by statistics from the Colorado Department of Agriculture. On April 15, 1965, a hundredweight of potatoes brought $5.30, while the price on September 15 of the same year was only $1.62. AGRICULTURAL STATISTICS — 1968, *supra* note 41, at 60.

$3.50 per hundredweight in order to break even. At the time of the interview, russet potatoes were bringing $3.50 per hundredweight, while red McClure potatoes, for which the Valley is widely known, were bringing only $1.50. The livestock industry was reported to be in similar straits. The president of the San Luis Valley Cattlemen's Association reported:

> I've been in the cattle business in the valley for 30 years and it has become harder to make a profit each year. . . . The average cattleman in the valley is in bad financial shape — if things don't change in a few years a lot of them will go out of business.
>
> We have the same problems as the farmers. Our costs continue to rise, but we don't get as much of an increase in the price we receive for our cattle.

What particularly hurts the farmers and ranchers is that, while the prices for the products they sell are severely depressed, the prices for the family commodities and farm equipment they must buy steadily increase as the nation's cost of living index rises in an inflated economy. One grower stated: "Last year was the worst since Depression days. We received Depression prices for our potatoes, but we paid inflated prices for everything we had to buy."

With its major industry facing economic doldrums, unemployment in Conejos and Costilla counties is chronic and severe. The Colorado Manpower Coordinating Committee has classified the counties as two of the five Colorado counties which exhibit "substantial and persistent unemployment."[48] The burden of this high unemployment rate is carried largely by the Spanish-American segment of the local populace. From 1960 census figures of Colorado counties with Spanish-surnamed populations exceeding 2,500, the Colorado Commission on Spanish-surnamed Citizens arrived at this conclusion:

> The figures show that the percent of all unemployed which is Spanish-surnamed, in most counties, significantly higher than the per-

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[48] COLORADO MANPOWER COORDINATING COMMITTEE, COLORADO COOPERATIVE MANPOWER PLANS FISCAL YEAR 1969, at I-43 (1968). The following table bears out this dubious distinction.

County	Year	Annual average workforce	Annual average unemployment	Annual average rate unemployment
Conejos	1963	2,655	299	11.3%
	1964	2,456	220	9.0%
	1965	2,215	216	9.8%
	1966	2,299	223	9.7%
	1967	2,248	212	9.4%
Costilla	1963	1,256	144	11.5%
	1964	1,121	108	9.6%
	1965	918	116	12.6%
	1966	847	109	12.9%
	1967	897	115	12.8%

Id. at I-44 to I-45.

> cent of the labor force which is Spanish-surnamed. In the total of these counties the unemployed is almost twice the labor force percent. In some counties, notably *Conejos, Costilla,* Huerfano, Las Animas, Otero, Pueblo, and Weld, the difference is remarkably large, indicating some significant local factors contributing to unemployment. It is difficult to isolate these factors but in view of the fact that these are counties with long histories of Spanish-surnamed populations with employment traditions in agriculture, it would be difficult to believe that existing jobs were being denied these people. Rather it would seem that traditional agricultural jobs are disappearing in these areas.[49]

The vast majority of the indigent residents in the two-county region do not live on farms. Rather, they live in and around the small communities.[50] The employment pattern of these community residents shows that many are employed as seasonal farm laborers. Few hold white collar jobs. In 1960, 27 percent of the employed in Conejos County and 24 percent in Costilla County held what can be categorized as white-collar jobs, compared to the national average in 1960 of 41.1 percent.[51] In a survey of 150 residents of the nearby Spanish-American *barrio*[52] of Lariat in Rio Grande County, the total working force was 114, with 36 indicating no profession, unemployed, or retired. The occupational pattern of the 114 persons in the working force is set forth in Table 1.

TABLE 1[53]

Occupations of Residents of the Lariat Barrio

Occupation	Number of Residents in Occupation	Percentage of Residents in Occupation of Total Work Force
Farm Laborer	50	43.10
Carpenter	11	9.48
Mechanic	10	8.62
Miller	9	7.76
Domestic	6	5.17
General	4	3.45
Heavy Equipment Operator	4	3.45
Other	22	18.97
TOTAL	116	100.00

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[49] ASSEMBLY REPORT, *supra* note 39, at 27 (emphasis added). The 1960 census figures from which the Commission drew its conclusion reveals that 45.52 percent of the labor force in Conejos County was Spanish-American, while 74.66 percent of the unemployed in the county were of that ethnic grouping. For Costilla County, the percentages were 65.63 and 90.59 percent. *Id.* at 28.

[50] *See* note 37, *supra.*

[51] OEO COUNTY REPORTS (unpaginated) (1968).

[52] A *barrio* is, in normal parlance, a Spanish-American ghetto. In the sparsely populated rural area, however, a *barrio* is, more specifically, the separate and distinct community of Spanish-Americans living adjacent to a small Anglo community.

[53] E. Ahrens, *supra* note 27, at 73. The discrepancy in the totals stems from the author's original table.

None of the above jobs were high-income occupations. According to the author of the study,

> [e]ven when potentially higher income professions such as construction worker, mechanic, plumber, mason and heavy equipment operator are listed, those so employed are working on the minimum, or apprentice, wage level. . . . The few marginally upper-income jobs, especially those of a specialized nature, and also the farm labor group itself, are largely seasonal. This means, then, that from three to five months of the year, most, if not all, of the labor force of the Lariat community become unemployed.[54]

Reminiscent of John Steinbeck's *The Grapes of Wrath,* migrant laborers still toil under a hot autumnal sun harvesting potatoes, lettuce, and spinach in the San Luis Valley.[55] Especially during peak harvest time, the demand for seasonal agricultural laborers cannot be fully met by local residents, and migrant workers, principally Spanish-Americans, but also including a sizeable portion of Navajo Indians, are recruited from New Mexico, Arizona, and Texas.[56] Until 1963 a portion of the seasonal agricultural farm labor demand was provided by "braceros" — hard-working Mexican nationals who entered into the United States temporarily and furnished a relatively cheap labor pool for large farming operations. But with the congressional abolition of the bracero importation in 1963,[57] migrant agricultural workers have all been of United States citizenship. It is virtually impossible to accurately determine the number of migrant laborers entering Colorado annually, but reliable estimates have indicated that this influx is steadily decreasing each year as the demise of the bracero program and increased mechanization and consolidation of farming operations take their toll.[58]

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[54] *Id.* at 72-74.

[55] Report to the Colorado General Assembly, Migratory Labor in Colorado 45 (1962) [hereinafter cited as Migratory Labor Report].

[56] *Id.* § 68, at 55. The peak periods of demand for migratory laborers are in July and September of each year. During 1961 and 1962, between 36 and 40 percent of the agricultural laborers employed during these peak periods were local residents and the remainder were presumably migrants. *Id.* at 51.

[57] Congress refused to extend the Agricultural Workers Importation Act (Mexican), 7 U.S.C. § 1461 (1951), thus causing the legal importation of Mexican laborers to cease as of December 31, 1964. *Id.*

[58] In 1962 it was estimated that 15,000 migratory laborers were employed in Colorado in a normal crop year. This figure placed Colorado twelfth highest in the nation and fourth highest in the Rocky Mountain and West Coast states in volume of interstate migratory laborers employed. Migratory Labor Report, *supra* note 55, at 1. In 1966, however, it was estimated that only 7,830 migrant laborers were employed in the state. Colorado Department of Employment, Annual Farm Labor Report 8 (1966). For further explanation of the cause of this decline see Chase, *The Migrant Farm Worker in Colorado — The Life and the Law,* 40 U. Colo. L. Rev. 45, 63 (1967).

The migrant laborer, at least until recently,[59] was the epitome of the forgotten American, facing unique social, economic,[60] and legal problems. "This group rivals any other in our society in being isolated from the benefits of economic growth and progress."[61] The special legal problems facing migrant laborers in Colorado — including the San Luis Valley — have been extensively discussed in an article appearing in the *University of Colorado Law Review*,[62] and they are consequently not extensively analyzed in this study, except as they bear on legal problems confronting the general indigent population in Conejos and Costilla counties.

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[59] On May 20, 1966, the Colorado Migrant Council was formed and established as a non-profit corporation in the State of Colorado, to initiate and operate programs to assist migratory and other seasonally employed agricultural workers and their families. Shortly thereafter, the Council was awarded funds from the migrant branch of the Office of Economic Opportunity. The initial program was composed of the following components: (1) Infant Education Program; (2) Itinerant Tutor Programs; (3) Night Adult Education; (4) Day Adult Education. Approximately six months after the initial funding, the Council received approval of additional grants to provide extended services to farm workers and their families. These included Summer Head Start and Vista programs.

The Council is currently composed of 40 members, one-third of whom are direct representatives of the poor. A staff of approximately 25 persons is employed at the central administrative office in Denver, Colorado. More than 150 persons conduct educational programs for the Council. During the summer, when agricultural activity is high, the staff increases to more than 300 persons in order to at least partially meet the educational and child care needs of the migrant and seasonal farm workers. COLORADO MIGRANT COUNCIL, COLORADO MIGRANT COUNCIL PROSPECTUS (undated).

In addition to the Council, the Migrant Children Education Act, COLO. REV. STAT. ANN. §§ 123-29-1, *et. seq.* (1963), was enacted to provide migrant children with the educational tools which can enable them to escape the cycle of poverty that has entrapped their parents.

[60] One significant breakthrough that adds another span in bridging the hiatus between the migrant and the more affluent society was the recent establishment of a federal minimum wage increasing to $1.30 per hour in 1970 for agricultural employees. Fair Labor Standards Act of 1938, 29 U.S.C. § 206(b), *as amended,* (Supp. 1969). Employers can, however, avoid the dictates of the act by employing less than 500 man-days of farm labor during the peak harvest calendar quarter, and the fraudulent "contractor system" of migratory employment still siphons off money due to the migrants into the pockets of the contractor who recruits the labor crews from out-of-state, furnishes them with often inadequate housing, and acts as a middle man between the farmer and the migrants on wage payments. *See* Chase, *supra* note 58, at 48, 59.

Another span was provided by the recent Supreme Court decision holding residency requirements for state welfare assistance — a complete barrier to almost all migrant laborers — violative of the fourteenth amendment. Shapiro v. Thompson, 394 U.S. 618 (1969). Shortly after that decision, three cases were filed in the United States District Court in Denver challenging the legality of Colorado's residency requirements, principally the one-year requirement for AFDC payments, COLO. REV. STAT. ANN. § 22-11-4 (1963). The Rocky Mountain News, May 10, 1969, at 5, col. 4; The Denver Post, May 10, 1969, at 26, col. 6.

[61] Shriver, *Rural Poverty — The Problem and the Challenge,* 15 KAN. L. REV. 401, 403 (1967).

[62] Chase, *supra* note 58. The author is a professor of law at the University of Colorado, and the first portion of his article details his experiences during one summer when he worked, lived, and traveled with migrant laborers following the harvest demand around the state. *See also* Parkinson & Harper, *The Law and Migrant Agricultural Workers,* 38 DICTA 341 (1961). *See generally* PUBLIC HEALTH SERV., U.S. DEP'T OF HEW, MIGRANT HEALTH PROGRAM, CURRENT OPERATIONS AND ADDITIONAL NEEDS (1967); Rummel, *Current Developments in Farm Labor Law,* 19 HASTINGS L.J. 371 (1968); Note, *Migrant Farm Labor in Upstate New York,* 4 COLUM. J. L. & SOC. PROB. 1 (1968).

C. *Income and Age*

Of the 63 Colorado counties, Costilla ranks lowest and Conejos third from lowest in average annual income level of residents — $1,816 and $2,097 respectively.[63] The correlation between the high percentage of Spanish-American populace and the low income index is not unrelated. With few exceptions throughout the state, the rural Spanish-American is indigent. A study of the Spanish-American population of Colorado, commissioned by the 45th General Assembly of the state legislature, reported:

> The clearest generalization that can be made about the Spanish-surnamed population of Colorado is that it exists in a state of poverty, or near poverty. This conclusion is inescapable from the latest complete data derived from the 1960 census, and other research. In view of the inflationary pressures in our economy since 1960 and the continued decline of unskilled and agricultural employment opportunities, there is no reason to assume that the economic condition of the Spanish-surnamed population has improved in recent years.[64]

In the two counties, as well as in the State, the Spanish-American families constituted a greater proportion of those families with incomes of less than $3,000 per year in 1960 than families of any other single ethnic group. The percentage of Spanish-American families with less than $3,000 annual income was 65.10 percent in Conejos County and 81.25 percent in Costilla County.[65] Under the sliding scale standards of poverty developed by the Office of Economic Opportunity, the poverty line for a nonfarm family of four in Conejos County stood at $3,026 in 1966, and at $2,989 for Costilla County for the same year. By these standards,[66] 750 of the 1,675 families residing in Conejos County in 1966 were considered poor, and 374 of the 698 families in Costilla County were in the same category. In both instances, the incidence of families in poverty was twice the percentage for the total state population.[67]

The age distribution of the residents in the two counties is skewed in the direction of those under 18 years of age; 47.5 percent of the population of Conejos County and 47 percent of the population in Costilla County fall into that category.[68] Young adults coming of age are migrating to cities in Colorado and other states in pursuit of a more productive and exciting life. Remaining behind are the very young and the very old. An intensive study of the nearby Lariat

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[63] ASSEMBLY REPORT, *supra* note 39, at 18 (Table 4).

[64] ASSEMBLY REPORT, *supra* note 39, at 16.

[65] *Id.* at 18. The *median* income of Spanish-American families was $2,436 in Conejos County and $2,105 in Costilla County, while the median income of all families in the counties was $3,063 and $2,375 respectively. *Id.*

[66] The family size of four is used as illustrative. Many families in the two counties were of larger size.

[67] OEO COUNTY REPORTS (unpaginated) (1968).

[68] COLORADO YEARBOOK 1962-1964 (1964).

barrio[69] revealed that only 16 percent of the community population was composed of the 18-30 age group.[70]

> In general, the Spanish-surnamed Coloradan is migrating, like all Coloradans, from the rural areas to the urban areas. Although the total population of Colorado increased 32.4 percent between 1950 and 1960, the urban population of Colorado increased 55.5 percent. The slight increase of 2.1 points in the percent of the Spanish-surnamed population in Denver county indicates that the Spanish-surnamed may be urbanizing at even a higher rate than the general population.[71]

The migration of young adults from the rural counties[72] results in a "concentration of Spanish-surnamed in the younger age groups. In most countries this population concentration reaches its peak in the teenage group. This has special implication to education and youth problems. It is also safe to generalize that within the next 10 years the number of Spanish-surnamed citizens eligible to vote, as a percent of the total voting population, will rise appreciably and this may have significent political implications."[73]

D. *Housing, Education, and Welfare*

Rural housing conditions in the two counties exemplify the general statement of Mr. Richard Margolis of the International Self-Help Housing Associates: "In rural America there are more inhabited houses not fit to live in than in the slums of all our cities put together."[74]

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[69] For a definition of the word *barrio, see* note 52 *supra.*

[70] E. Ahrens, *supra* note 27, at 37.

[71] Assembly Report, *supra* note 39, at 7, 14. The 2.1 percentage growth figure does not reflect the absolute growth in Spanish-surnamed population during the period, but rather the increase in the relative percentage of the rapidly growing total population of Denver County. *See also* E. Ahrens, *supra* note 27, at 48-53, for a complete analysis of recent population mobility in the Lariat community. This migration of rural Americans to the urban centers has been cited as a significant factor in the disintegrating processes of urban ghettos. The immigrants have "exchanged life in a rural slum for life in an urban slum, at exorbitant cost to themselves, to the cities, and to rural America as well." The People Left Behind, *supra* note 3, at ix.

[72] While the population loss as noted in the census in Costilla County from 1950 to 1960 was 1,848, the net loss from migration was 3,211 during the same decade. This latter figure reflects the much greater number of births than deaths during the decade, a condition which lessens the actual figure for migration. Andrews, *supra* note 32.

[73] Assembly Report, *supra* note 16, at 7. In Denver, the increasing numbers of Spanish-Americans has already resulted in political implications. Led by a fiery, 40-year-old former prizefighter named Rodolfo (Corky) Gonzales, the Crusade for Justice has been established to provide a focal point of ethnic cohesion bordering on separatism. The stated goal of the organization is to "instill a sense of pride and of belonging in Hispano youngsters." *Hispanos: The Sleeping Giant,* The Denver Post (Special Supp.), May 13, 1969, at 2, col. 1.

[74] R. Margolis, Something to Build On 28 (1967). Statistics for 1960 reveal that of the 2.1 million rural housing units in the western United States, 700,000 were substandard. U.S. Bureau of the Census, Dep't of Commerce, Census of Housing: 1960, Vol. 1, *States and Small Areas, United States Summary, Final Report* HC (1)-1 (1963). The continued existence of such deplorable conditions is not alone attributable to the indigency of the inhabitants. Other factors exert influence, among which are the fluctuating seasonal demand for low-cost rural housing, the lack of any incentive for the moneyed interests to invest in the construction of rural housing in light of rural migration to urban areas, the general nonexistence of adequate building and housing codes in rural areas or the inadequate enforcement of those that exist, and the public's lack of concern with housing problems among the rural poor. Mittelbach & Short, *supra* note 45, at 464.

There were 2,716 housing units in Conejos County in 1960, 2,020 of which were occupied — 1,513 by owners and 507 by renters. In Costilla County for the same year 1,388 housing units existed and 1,006 were then occupied, 746 by owners and 260 by tenants.[75] Many of the homes in the region, particularly those owned or occupied by indigent families, are constructed of logs, adobe, or a combination of the two.[76] The houses are often small,[77] and the large families, typical of low-income Spanish-Americans in the area, tend to create crowded housing conditions. From the 1960 census, only 41.6 percent of all housing units in Conejos County were said to be in sound condition, with all plumbing facilities. For Costilla County, this figure was an astonishingly low 18.8 percent.[78] Fully 76.4 percent of all housing units in the state were so categorized.[79] Particularly lacking in most small villages in the two counties are community-wide water and sewage facilities. Running water and inside toilets are the exception rather than the rule. A few of the larger communities have in recent years incorporated water and sewage districts, but the initial installation costs have inhibited many indigent homeowners from hooking into the main systems.[80] Without such community-wide utility systems, most residents in large areas of both counties still obtain their drinking water from wells[81] and still use outside toilets.[82] Often the water source and the outside toilets are located in close proximity to each other, presenting very real health hazards of concern to local civic leaders.

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[75] Lazy Eight Project, *supra* note 38. A recent and cursory survey performed by VISTA volunteers in one of the small communities in Conejos County found 42 occupied housing units within the recently incorporated water district, which corresponds closely to the geographical definition of the unincorporated community. Of these 42 units, 37 were owner-occupied and only 5 were rented. Of the 142 occupied housing units in the *barrio* of Lariat, 104 were reported to be owner-occupied and 38 renter-occupied, and the median number of rooms per unit was only 3.7. E. Ahrens, *supra* note 27, at 55.

[76] Of the 142 housing units surveyed in Lariat, for example, 62 were constructed of logs, 34 were of adobe, and 12 were of logs and adobe. Twenty-three more were frame houses, 7 were frame and log, 3 were frame and adobe, and only one was made of brick. E. Ahrens, *supra* note 27, at 55.

[77] The median number of rooms per housing unit is 4.1 in both counties. Lazy Eight Project, *supra* note 38.

[78] Lazy Eight Project, *supra* note 38. A separate group of VISTA volunteers in Costilla County surveyed the housing conditions in eight small villages within the county in which resided 179 families. According to their analyses, 34 percent of the housing units were deemed to be in good condition, 35 percent in fair condition, and 20 percent in poor condition. San Luis, Colorado, VISTA Volunteer Survey, May, 1968 (unpublished and unpaginated) [hereinafter cited as VISTA Survey]. No explanation is given for the missing 11 percent. From the study of the Lariat barrio of 142 occupied housing units, 33 were characterized as being in fair condition, 37 as poor, and 72 as being in bad condition and in need of replacement. E. Ahrens, *supra* note 27, at 55.

The import of these statistics is not their literal accuracy. The criteria employed in evaluating the housing units in the studies mentioned are not specified and, moreover, are probably influenced by subjective considerations. The statistics are significant only in their general indication of sub-par housing conditions in the region.

It should be noted that the negative conclusions of existing housing conditions should not be equated with filth and disorder inside the homes. The Lariat barrio surveyors, making a subjective judgment of the quality of housekeeping in the housing units surveyed, reported that 85 percent of the homes were clean and orderly. "Because of these findings, the myth which claims that these people are all dirty and have chosen to live that way, is a fallacy. In fact, the Lariat women must be commended for the measure with which they maintain clean homes." *Id.* at 56.

[79] E. Ahrens, *supra* note 27, at 58.

[80] In only one of the eight villages surveyed by VISTA volunteers in Costilla County was city water available, and only 52 percent of the families had availed themselves of this service. VISTA Survey, *supra* note 78.

In education, the President's National Advisory Commission on Rural Poverty has generally observed that

> rural adults and youth are the product of an educational system that has historically shortchanged rural people. The extent to which rural people have been denied equality of educational opportunity is evident from both the products of the educational system and the resources that go into the system. On both counts, the quality of rural education ranks low.[83]

This general observation by the Commission is particularly apt in Conejos and Costilla counties. In the first instance, the resources going into the local educational systems[84] are not on a par with the rest of the state. Both counties are plagued with very low taxable property bases, especially in those school districts where the lack of industrial development of any kind is particularly acute. This factor alone inhibits the necessary capital growth of the local public school systems.[85] As a direct result, the local and county financial support

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[81] In the eight villages surveyed in Costilla County, 46 percent of all families obtained water from deep wells (50 or more feet) using pumps; 50 percent utilized an open or shallow well source; 3 percent reported using water from a nearby river or stream; and 9 pecent — all in one village — used city water. Since some families obtained water from more than one source, the total percentage exceeds 100. VISTA Survey, *supra* note 78. Prior to the recent extension of city water services from Monte Vista to the Lariat *barrio,* there were 99 wells in the latter community, with several families utilizing the same wells. Sixty-five were deep wells and 34 were shallow. E. Ahrens, *supra* note 27, at 58. (*Quaere* whether one can tell the depth of a well by the length of the handle on the pump.)

[82] From the Costilla County VISTA Survey, only 42 percent of the families had some form of indoor toilets. VISTA Survey, *supra* note 78. In Lariat, the figure was 23.3 percent. E. Ahrens, *supra* note 27, at 58.

[83] The People Left Behind, *supra* note 3, at 41.

[84] There are presently five school districts in the two counties, three in Conejos and two in Costilla. Each district has one high school and several elementary and grade schools.

[85] One study of Costilla County relates the historical development of the public school system in the county — which mirrors the early development in Conejos County — and notes the difficulties caused by a low tax base.

> A particularly difficult problem area is the school system [in Costilla County]. Considerable change and improvement has occurred in the schools since World War II. Prior to the war there was a parochial school system located in [one of the small towns]. Tuition was charged, and the teachers were largely nuns. There was a small public school operating which attracted those who could not afford tuition. As time went on this public school grew and seemed to reflect the changing income structure of the area.
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> At last there was a move to consolidate the small public schools scattered over the county. Early in the decade of 1950-60 the many small school districts formed a federation of districts and joined in a common high school. . . . The parochial schools closed and their facilities were turned over to the public school system. . . . After a few years the school districts of the county consolidated into two districts, one in the north end of the county and the other in the south. Each district now operates its own high school and other grades. . . .
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> The northern district includes the railroad that crosses the county and a main highway, which made a great deal of difference in the tax income. It

of the public schools is lower in these two counties than in any other.[86] Concomitantly, state financial support as a percentage of all school revenues is the highest in the state.[87] Public school facilities in the two counties range from an ill-equipped, one-room country schoolhouse to the more modern facilities at a recently constructed high school building. Perhaps the most important ingredient of a quality education, however, is the caliber of the teachers. On this count, the rural schools in Conejos and Costilla counties are not generally well endowed.[88] While it is by no means easy to identify the intangible factors that distinguish a higher from a lower quality faculty, one very tangible factor must be the level of teacher salaries. As the President's Advisory Commission on Rural Poverty stated: "Because of low teacher salaries, rural schools are not able to attract and hold the better teachers."[89] Accepting this premise as valid, there can be

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> also included the major industry in the county, a lettuce and potato packaging and shipping plant. . . .
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> The southern school district had almost no industrial development and depended heavily on state funds available for special problem areas. Major problems of this district include the low tax base of the area and the need for almost all new facilities, as well as improvements in all other aspects of the school program.

Andrews, *supra* note 32, at 126-27. For the school term 1967-68, the total assessed property valuation per average daily attendance (ADA) of students in Conejos County was the lowest in the state — $4,632, and third from low in Costilla County — $5,947. Colorado Dep't of Educ., Comparative Information on Pupil Personnel, School Finance, Colorado School Districts, 1967-1968, at 2-15 (1969) [hereinafter cited as School Finance Information].

[86] In Conejos County, the local financial contribution to the public educational system as a percentage of the total school revenues in the county stood at 19.7 percent in 1967-68. In Costilla County, that percentage was 23.5 percent. On the other hand, the highest percentage existed in Denver County, where local funding provided 79.6 percent of county school revenues.

The county financial support as a percentage of the total school revenues in Conejos County for the school term 1967-68 was 11.3 percent. The figure for Costilla County was 9.1 percent. Only three other Colorado counties had a lower percentage of county support — Denver, Jefferson, and Lake counties — and none of these have county public school fund levies as do all other counties. School Finance Information, *supra* note 85, at 31-43.

[87] Conejos County received 59.1 percent of its total county school revenues from state sources in 1967-68. Costilla County received 42.6 percent. State contributions — and, to a lesser extent, federal contributions (Costilla County received 24.9 percent of its total county school revenues from federal sources, the highest in the state, while Conejos County received 9.9 percent) — tend to lessen the gap in financial resource input between the poverty-stricken counties and the more industrialized counties with higher tax bases from which to draw school funding. *Id.*

[88] In at least one school district, it was reliably reported that several of the teachers had two or less years of college education.

[89] The People Left Behind, *supra* note 3, at 41. The ethnic composition of the faculties in the public schools of the two counties under study apparently mirrors the ethnic composition of the population in the immediate area. One study of Costilla County noted:

> The personnel of the two school districts showed some ethnic differences and followed somewhat the pattern of the population of the districts. The northern districts had both Anglo and Spanish name teachers, while the southern district, as near as was observed, had only Spanish teachers.

Andrews, *supra* note 32, at 127.

little doubt that the students in the public schools of Conejos and Costilla counties are not exposed to the quality of teaching generally associated with many urban schools. The average annual salaries for teachers and administrators are the lowest in the San Luis Valley and compare unfavorably with the remainder of the state.[90]

The product of the educational system in the two counties — in terms of the educational achievement level of the adult population — is also very low. From the 1960 census, the percentage of persons over the age of 25 in Conejos County who had attended school for eight years or less was 57.7 percent. For Costilla County, the percentage was 68.6 percent. Among Colorado's 63 counties, these figures ranked 59th and 63rd respectively. Again from the 1960 census, the median number of school years completed by persons aged 25 or over in Conejos County was 8.7. For Costilla County, the median was 7.8. Only 29.3 percent of the over-25 age group of Conejos County had completed high school, and for Costilla County, that figure was 27.9 percent.[91] The student dropout rates for the public schools in the two counties are slightly below the average for the San Luis Valley

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[90] For the school term 1968-69, the annual average salaries — not to be confused with starting salaries — for the five counties in the San Luis Valley, Denver County, and statewide are shown in the following table. The figures for Denver and statewide vary, depending upon the grade level taught.

County	Average Annual Salary
Conejos	$5,509
Costilla	5,521
Mineral	5,742
Saguache	6,093
Rio Grande	6,251
Alamosa	6,581
Denver	7,400-8,600
Colorado statewide	6,900-7,300

Telephone interview with Colo. Dep't of Educ., Statistics and Data Processing Div., May 22, 1969.

[91] Lazy Eight Project, *supra* note 38. A study of poverty submitted to the Colorado Migrant Council reported that

> as one examines older and older males in the population, especially among the Spanish surname persons, the [educational achievement] level drops steeply. This is in part a result of an inadequate educational system in the past, and in addition the perceptions on the part of the rural population that formal education was not always necessary to be a successful wage earner and citizen.

Report on Colorado Poverty to the Colorado Migrant Council, Dimension: Education, at 1-2 (1968) (unpublished). The low level of educational achievement among the indigent residents of the two counties was also documented during the field survey portion of this project. One woman resident of a very small community who was employed as a cook by the public elementary school stated flatly that she had achieved the highest educational level among the permanent residents of the community. She had completed the 10th grade.

and the entire state,[92] and even further below the national average.[93] Yet, the dropout rate is significantly higher among Spanish-American youth,[94] and it is this group which especially needs to escape the existing culture of poverty in Conejos and Costilla Counties by the avenue of an adequate education. There are no colleges or technical schools in the two counties, but a 4-year state supported institution — Adams State College — is located in Alamosa County north of Cos-

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[92] The projected dropout rate for the schools in Conejos County was 17.9 percent. The rate in Costilla County was 22.5 percent. Letter from Harold L. Hoyt, Consultant, Division of Guidance Services, Colo. Dep't of Educ., Feb. 5, 1969. For the San Luis Valley the rate was 21.9-24.0 percent, and for the entire state of Colorado, 22.8-24.0 percent. Colo. Dep't of Educ., Div. of Guidance Services, Colorado Public School Dropout Data 1967-68 (Fifth Annual Report), October 1968, at 7-8 (unpublished bulletin available from the Colorado Department of Education). The term "projected dropout rate" is explained as follows:

> The projected dropout rate indicates the cumulative effect of dropout that occurred in one year. It is comparable to the results of longitudinal dropout studies and also comparable to national statistics which indicate the percentage of pupils who drop out. It answers the question, 'What proportion of our pupils would be dropouts under the current holding power conditions?'
>
> A *minimum* projected dropout rate is calculated by considering all unknown withdrawals as transfers.
>
> A *maximum* projected dropout rate is calculated by considering all unknown withdrawals as dropouts.
>
> The true dropout rate is between these minimum and maximum rates.

Id. at 3. The above percentages given for the San Luis Valley and for Colorado are minimum-maximum figures. All of the figures are based upon grades 7-12 during the school year 1967-68.

[93] The Presidents Advisory Commission on Rural Poverty stated that 28 percent of rural nonfarm youth and 23 percent of rural farm youth aged 14 to 24 drop out of school before high school graduation. THE PEOPLE LEFT BEHIND, *supra* note 3, at 41.

[94] In general, the Colorado Commission on Spanish-Surnamed Citizens observed that

> an evident "drop-out" problem exists among Spanish-surnamed youth. This is indicated by a disproportionate percent of Spanish-surnamed adults who have less than a high school education. This point is made clearer by looking at the various age groups in school at a given point in time. . . . It can be seen that the percent of Spanish-surnamed children, ages 5 to 15, in school does not differ significantly from the . . . total population. But in the age groups after 15 years of age the Spanish-surnamed percent drops off markedly.

ASSEMBLY REPORT, *supra* note 39, at 54. *See also* M. MANUEL, SPANISH SPEAKING CHILDREN OF THE SOUTHWEST 53 (1965). Based on 1960 census statistics in which the percentage of Spanish-Americans in the population over age 25 for Conejos County was 48.66 percent and for Costilla County was 68.18 percent, the Colorado Commission on Spanish-Surnamed Citizens noted the following percentages of Spanish-Americans in selected educational level groupings of the total residents over 25 in the two counties:

Years of School Completed	Percentage of Population Group which is Spanish-American	
	Conejos	Costilla
4 or less	82.19%	80.85%
5 through 8	60.12%	75.10%
9 through 11	34.00%	56.44%
12 — High school graduation	20.15%	44.23%

ASSEMBLY REPORT, *supra* note 39, at 50. The fact that the percentage of elementary-school-educated Spanish-Americans is greater and the percentage of high-school-educated Spanish-Americans is less than their normal ethnic incidence in the general population of the two counties gives credence to the observation of the procilivity of Spanish-American youngsters to drop out of school at a higher rate than their Anglo counterparts.

tilla County, and a 2-year vocational school is presently in the planning stage for location near Monte Vista in Rio Grande County.[95]

The number of recipients of public welfare assistance in both counties is very high. The percentage of Costilla County's population in fiscal year 1967-68 receiving some form of welfare assistance was 28.82 percent, the highest in the state. Conejos County was fourth highest with 21.40 percent.[96] A considerable proportion of these recipients are old age pensioners, reflecting the high incidence of elderly persons within the general populace.[97] Aid to families with dependent children also comprises a significant proportion of the welfare caseloads in the two counties.[98] The federal food stamp program,[99] introduced in Colorado in March of 1965, is operative in both counties with mixed results: For participating families, the pocket-book benefit is obvious;[100] but bureaucratic red tape has hindered the full deployment of the program among needy indigents.[101] As with other indicia of poverty in the region, "the welfare rolls reveal a high incidence of Spanish-surnames."[102] This is especially true of the AFDC program.[103]

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[95] The President's Advisory Commission on Rural Poverty observed: "In 1960, about twice as high a proportion of urban as rural youth were enrolled in college." The People Left Behind, *supra* note 3, at 41. In 1963, a total of 231 out of 498 graduates from San Luis Valley high schools attended college. Of those attending college, 165 were Anglo and 66 were Spanish-American. Colo. Dep't of Educ., Pupil Attendance: Colorado Public Schools, 1965-66 and 1966-67, at 4-5 (1967). The only available study showing an ethnic breakdown of high school graduates from Valley schools and tracing the ethnic proportions through college attendance was made of the graduating classes of the years 1953-55. The study demonstrated that approximately twice as many Anglo graduates attended college than Spanish-American graduates. In 1955, for example, 53.59 percent of all Anglo high school graduates attended college while only 28.08 percent of the Spanish-American graduates did so. J. Maestas, Culture and Transition 82-90 (1968) (unpublished master's thesis on file at Adams State College Library, Alamosa, Colorado). A substantial proportion of each year's graduates of high schools in the San Luis Valley take advantage of the proximity and low tuition of Adams State College. *Id.* at 91-104.

[96] Colorado Dep't of Social Services, Div. of Pub. Welfare, Fiscal Report: 1967-1968, at 63 (1969) [hereinafter cited as Welfare Report]. These figures were based on an estimated population as of July 1968 of 3,800 in Costilla County and 8,500 in Conejos County. The total number of welfare recipients in Costilla County in 1968 was 1,095; in Conejos County the number was 1,819. *Id.*

[97] The authority for the old age pension program in Colorado is Colo. Const. art. 24, §§ 1-9, and Colo. Rev. Stat. Ann. §§ 101-1-1 to 101-2-4 (1963), *as amended* (Supp. 1965, 1967, 1969). The old age pension program in Colorado is financed entirely by state and federal funds and is the major welfare expenditure in Colorado, accounting for 37.20 percent of the welfare dollar during fiscal year 1967-68 and 55.01 percent of the average monthly welfare caseload statewide. Costilla County has the highest recipient rate per population in the state, and 79.75 percent of its average monthly welfare caseload are old age pension cases. Conejos County has the fifth highest rate, and 71.99 percent are old age pensioners. Welfare Report, *supra* note 96, at 59-63.

[98] AFDC cases account for 12.77 and 9.09 percent of the average monthly caseloads in Conejos and Costilla Counties respectively. Conejos County is third highest and Costilla County sixth highest of all counties in the state in the recipient rate of AFDC per population. Welfare Report, *supra* note 96, at 71. For an excellent analysis of aid to dependent children in Colorado see Note, *Aid to Families With Dependent Children — A Study of Welfare Assistance,* 44 Denver L.J. 102 (1967).

Other welfare programs in effect in the two counties are Aid to the Needy Disabled, Medical Assistance for the Aged, Aid to the Blind, Tuberculosis Assistance, Child Welfare Assistance, and General Assistance. *See generally* Welfare Report, *supra* note 96.

[99] Authorized by the Food Stamp Act, 7 U.S.C. §§ 2011-25 (1964).

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[100] Federal regulations provide that eligibility for food stamps shall be on a household basis. 7 C.F.R. § 1601.3(a) (1969). The Colorado Superintendent of Social Services, Division of Public Welfare has set specific standards to be used in determining eligibility, pursuant to 7 C.F.R. § 1601.1(f) (1969). For a household consisting of one person, the net monthly income limit for eligibility in the food stamp program is $134.00. For a 10 person household, the net monthly income limit is $464.00. "Income" is defined by the Department as "money you get again and again — like wages, pensions, unemployment compensation, social security benefits, disability payments, public assistance." *Food Stamp Program — facts for families who want food coupons*, FS-6A (4/70) Colorado State Department of Social Services Publication. For fiscal year 1967-68, total food sales of $150,844 in Conejos County and $107,724 in Costilla County were made under the auspices of the food stamp program. Welfare Report, *supra* note 96, at 88.

[101] During the field survey, the food stamp director of one of the two counties stated that food stamps were readily available but few indigents took the necessary time to apply or were ignorant of the program. The application process for food stamps, is defined in *Food Stamp Program — facts for families who want food coupons*, note 100 *supra*, consists of the following: the head of the household or an adult member of the household must make the application, in person, at the office of the county department of welfare of the county in which the household is located. He must give his name and address, state how many persons are members of the household, indicate whether the household has cooking facilities (households without cooking facilities are ineligible) and indicate what income and liquid assets each member of the household has. He is required to bring the following information with him: personal identification (such as a Social Security card or driver's license), rent receipts or records of mortgage payments, Benefit Rate Determination Notice or check of unemployment compensation, letter of award for social security, names and addresses of employers of each member of the household plus wage stubs for latest wages paid, letters or notice for workmen's compensation, veteran's benefits, or pension, bank books for savings and/or checking accounts, and the number of U.S. Savings Bonds (Series E) held by each member of the household.

Although the Denver office issues food stamps every day, offices in other counties of the state issue stamps only on certain days of the month, and these dates change from month to month. For example, one applying for food stamps at the Alamosa office in June, must appear between the hours of 8:00 a.m. and 12:00 noon or 1:00-3:00 p.m. on June 22, 23, or 29 to be heard. If he applies on different days, he cannot receive any food stamps. He must buy the food coupons regularly, for if he misses a purchase for more than one month, new application for food stamps must be made.

The necessity to accumulate a sizeable amount of cash before purchasing a minimum block of food stamps has been particularly criticized:

> Even should families qualify for the stamps, . . . they would then have to pay an exorbitant amount to get them. For example, a family of six, earning $150 between them in the previous month, would have to pay $64 for food stamps entitling them to purchase $106 worth of food. The notion that members of a family being paid daily or bi-weekly [referring specifically to migrant labor families] should be able to save $64 out of $150 earned in a month is absurd.

Chase, *supra* note 58, at 60. Growing criticism of the administration of the food stamp program has been felt nationally. Senator George McGovern of South Dakota has chaired a Senate subcommittee on hunger in America and has advocated distribution of *free* food stamps. A pilot program of free distribution was made in selected South Carolina counties in early 1969. *Hunger: It's There, All Right*, Newsweek, March 3, 1969, at 28, 29.

E. *Community and Professional Services*

There is only one attorney residing in and practicing law in either county, and he is elderly and semi-retired.[104] However, an active bar exists in both Rio Grande and Alamosa counties to the north. Each county has one local hospital, although neither is large and both are understaffed. The two-county area is in desperate need of more doctors and health services — there are three physicians practicing in each of the two counties — and, in response to this, concerned residents of Conejos County have initiated a pilot program of local health clinics providing free medical diagnosis to needy indigents. The clinics were open for one day each week in different communities and were staffed by volunteers and doctors from surrounding areas.[105] Several VISTA volunteers are located in each county under the auspices of each county's OEO Community Action Program office.

F. *The Class System*

In addition to the statistically documented demographic and social characteristics which describe the two-county area under study, the field research revealed that a surprisingly high degree of class consciousness permeates the small communities in the two sample counties. Two distinct classes are readily observable, and, for want of more descriptive terminology, they are denominated here as the

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[102] ASSEMBLY REPORT, *supra* note 39, at 38.

[103] In the San Luis Valley, the number of Spanish-American AFDC cases represented 86.17 percent of all cases, involving 89.90 percent of the total children receiving aid. This rate is significantly higher than the percent of Spanish-surnamed in the population. *Id.*

Particularly disturbing to the Commission was the evidence that many of the Spanish-American children receiving AFDC aid through their parent or parents would themselves become AFDC cases. *Id.* at 39. *See* COLORADO DEP'T OF SOCIAL SERVICES, DIV. OF PUBLIC WELFARE, AID TO DEPENDENT CHILDREN, CHARACTERISTICS OF SECOND GENERATION CASES, Report No. 63-D-1, June 1963. But, the Commission specifically refuted the off-heard charge that prolix child bearing among Spanish-American women is a result of the availability of AFDC. ASSEMBLY REPORT, *supra* note 39, at 41.

[104] One attorney resides in Conejos County but practices outside of the county. Another lawyer residing and practicing outside of the two counties regularly visits in the seat of Costilla County on a weekly basis.

[105] The La Jara Gazette, La Jara, Colorado, Sept. 20, 1968, at 1, col. 5. The first free health clinic was described as a "big success." About 176 persons received free medical checkups, and one week later, 65 more were examined. *Id.* In the Lariat community a free health clinic for local indigents has been sponsored by the Spanish Baptist Church. By the end of 1968, it was estimated that more than 2,000 indigent residents would be benefited by the free clinic. E. Ahrens, *supra* note 27, at 148-49.

Neither of these health clinic projects were principally established to provide free medical care. Rather, they serve as diagnostic centers for treatable disease which, if subsequently treated by a private physician, could be cured. This rather limited function, however, is a giant step in the slow march to eradicate the debilitating features of rural poverty. *See generally* THE PEOPLE LEFT BEHIND, *supra* note 3, at 63.

"establishment" class and the "poverty"[106] class. The dividing line between the two is hazy, and the forces propelling an individual into one class or the other are, at least to some degree, varied and interacting. To be sure, family income is the most significant determinative factor in the establishment-poverty class dichotomy, but it is not the only one. Some local residents fall within a moderate financial range — family income is above, but not comfortably above, the poverty line. However, few of these residents are not classifiable within either of the two classes. A truly middle-class in the sense of the suburban phenomena of the great American urban centers does not generally exist in the target area communities, even on a reduced scale and particularly where the Spanish-American culture predominates. One explanation for the absence of a middle class is that the migration of young people escaping the stagnant economy and dismal future in their native region has left a population consisting, in the main, of those unwilling to leave because they are successful (if not by financial standards, then by stature within the community) and those unable to leave because impoverished. Additionally, the indigenous population in the target area communities tends to think in absolute class terms — that is, with a few nondescript exceptions, a person has "made it" or he has not.

For local residents in the median financial range, factors other than income are determinative of membership in either class, and the most pervasive is simply possession of a position of authority or, in a broader sense, power. This authority may be over people, such as that held by a county judge, welfare director, CAP director, policeman, political chieftain, or employer. The power may be over the marketplace, such as that held by even a small businessman, or over the conscience, such as that held by a minister or priest. Possession of specialized knowledge or education, such as that held by doctors, lawyers, or educators, automatically qualifies an individual for "establishment" membership. Significant also are one's family connections; simply being closely related by blood to any leading member of the community has some tangible worth within the Spanish-American culture. Finally, in the few communities where both Anglos and Spanish-Americans reside in significant numbers, the "establishment" class has a disproportionate Anglo membership, thereby adding an ethnic factor to widen further the hiatus between classes.

In sum, then, the establishment-poverty class dichotomy is beyond precise definition, but it exists nonetheless, if not by rational classification, then by arbitrary normative assignment. It is very much a state of mind — an attitude — the result of both self-recognition and community recognition, interacting with more tangible factors such as income, property ownership, cultural group membership, possession of authority or power, education, age, family ties, and so forth. For research purposes, the definition of the establishment-poverty class dichotomy utilized the economic poverty line as a primary basis for distinction. Nonetheless, it will be assumed for purposes of analysis that the power/authority differences described above constitute primary elements which differentiate the two classes.

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[106] "Poverty" in this sense is not necessarily equated with the term in a strictly economic poverty-line sense. It is used at this point in contradistinction to the "establishment."

Besides the existence of the class system and the concomitant power/authority differentials implied thereby, one further ramification of the class system was observed which provided some insight into the nature of the indigents legal problems and the manner of their resolution. This involves the researchers' general observations of the attitudes of a majority of the members of the establishment toward the indigents and their legal problems.

It was observed that while the establishment class is aware of the pronounced poverty conditions in the region, it nonetheless tends to adopt a stance of ignoring, glossing over, or vigorously denying the manifest evidence which surrounds them. Exemplifying this attitude is the statement of Dr. Fred J. Plachy, former president of Adams State College in Alamosa and a one-time Republican candidate for the Colorado Senate: "Our people are happy and they are optimistic, and we have the greatest area in the country here. I don't believe in all this 'poverty' talk about the [San Luis] Valley — that is just political talk."[107] A second example of these efforts to hide the poverty in the two counties was related by several residents in one of the sample counties. Apparently, the former sheriff of that county had collaborated several years ago with a reporter from *The Denver Post* in an exposé of poverty and hunger in the county. The subsequent publication of the *Post* article angered many members of the establishment. It was felt that the article painted a biased and untruthful picture of conditions in the county, that the accompanying photographs of hungry children and dilapidated houses had been "staged." Consequently, establishment pressure was exerted on the sheriff. He disavowed any re-election ambition and moved from the county when his term of office expired.

The attitude of the establishment toward the indigents' legal problems was also observed. Many of the community leaders interviewed, constituting a fair sampling of the "establishment" class in the two counties, consider the principal legal need of the indigenous poor to be an education in the use and misuse of money. The county judge of one of the two sample counties, in expressing the view that the absence of free legal services is not the legal problem of first priority for indigents, added. "They [local indigents] bite off more than they can chew: They need, more than anything else, a course in economics." The attitude often expressed by these leaders was not one of paternalism toward the impoverished class.[108] Rather, it assumed an equal application of the establishment's standards of ability, knowledge, experience, opportunity, and success motivation to the poverty class, and the apparent failure of the poor to meet these imposed standards was seen as a lack of inner drive — a fault for which the indigent alone was responsible. It is not a compassionate view which grants appropriate obeisance to environmental factors beyond the indigent's control; it was, rather the traditional American free enterprise "bootstrap" view — that is, any man of ordinary intelligence who starts life at the bottom can "pick himself up by the bootstraps" and make a success of himself in this country. Thus, in conversations with establishment members of this genre, periodic references were made to specific indigents who purchased goods on an installment basis which were clearly beyond their means, regularly consumed their weekly paychecks on liquor, dropped out of school at an early age, or flagrantly disregarded time schedules for work on a job. By a process of spurious inductive reasoning, these establishment members considered the specific faults of the described indigents as common to the entire Spanish-American poverty class.[109] Symptomatic of this reasoning was the establishment's apparent malaise when it came to hiring the Spanish-American indigent. Few nonfarm jobs were available to him:

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[107] Baker, *supra* note 46, at 31, cols. 1, 5-6.

> In this valley, Hispanos can work only at farm or manual labor, with rare exception. Storekeepers and other businessmen are wary of hiring the Hispano for anything besides the most base labor.
>
> "You just can't depend on them," is the most common reason they offer for why they don't hire more Hispanos. "You can't trust them," comes second.[110]

To be sure, there were exceptions to this establishment attitude, and some community leaders surveyed evinced genuine concern and compassion for the welfare of their indigent brethren. These individuals constitute the backbone of the informal "legal" system among the rural poor,[111] and they are probably the contemporary remnants of the old *patron* system of paternalism which existed at an earlier time in Spanish-American culture.[112]

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[108] Even the Catholic clergy evidenced a surprising degree of aloofness from the endemic plight of their impoverished parishioners, possibly due to the advanced age of the priests and their long tenure in the several parishes.

[109] A marked ethnic factor enters into this attitude ascribing the negative character of a known indigent as a trait in common with all unknown persons in the same economic class. All indigent Spanish-Americans are the unstated subjects of this transposition, first, because there are few Anglo indigents in the region in comparison to the number of Spanish-American indigents, and second, because the Spanish-American culture is distinguishable in many respects from the Anglo culture.

[110] Huber, *supra* note 31, at 7, col. 2. The reference is to the Arkansas Valley on the eastern plains of Colorado, but the expressed attitude was also manifested among businessmen in the sample counties surveyed.

III. The Formal Legal System

As a general proposition, it can be said that the members of the two sample counties do not utilize the formal legal structure for resolution of most problems bearing legal implication. Instead, an informal "legal" system has developed which bypasses the lawyer and the courthouse and uses informal bargaining, self-help, and the assistance of nonlawyer, local confidants. This informal "legal" system, the consequence of both Spanish-American cultural imperatives and practical necessity, is discussed in further detail in § IV *infra*. This section will be devoted to a development of the reasons for the absence of attorney utilization by a substantial majority of the impoverished class and an analysis of the attorney contacts of the small group of indigents who did take their problems to an attorney.

A. *The View from the Bottom*

Only about 19 percent of the indigent residents surveyed in the sample counties had ever used the services of an attorney in any capacity, including criminal defense.[113] An even smaller percentage had utilized an attorney on more than one occasion. The two most prevalent types of legal problems brought by indigents to an attorney's office were domestic relations problems and criminal matters, generally the more serious misdemeanor charges.[114] Also mentioned were problems affecting real property (such as drafting deeds or quiet title actions), time payment purchase agreements, drafting wills, civil rights discrimination, insurance claims, and personal injury suits. Most of the indigent respondents felt that the attorney had helped them with the particular problem, although a few expressed an opinion that the lawyer had been of no assistance whatever.[115] Almost all of the indigents were charged some fee by the attorney, generally in the $5 to $25 range.[116] Only five respondents stated that they were charged nothing for advice received. Most of the indigent respondents who had contacted an attorney said that they had paid or were paying their attorney's bill, often by a time-payment plan. A few, however, candidly confessed that they could not or would not pay the full amount.[117] Every indigent who responded affirmatively to the attorney contact question had been referred to his or her attorney by a third party. Most references came from friends or members of the family, but priests, local confidants, or the Colorado Civil Rights Commission office in the town of Alamosa were also named.

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[111] *See* text, § IV *infra*.

[112] *See* note 161 *infra*.

[113] The Duke study on the other hand found that in the sample group of 198, 39 Negroes and 48 whites had used the services of an attorney on one or more occasions. Note, *supra* note 9, at 523. It might be suggested that this disparity can be explained in part by the somewhat more "urbanized" nature of the sample county there under study. *See* notes 122 and 180 *infra*.

[114] An independent examination of county and district court records in one of the sample counties for the period July 1967 to July 1968 revealed that a very high percentage of defendants on criminal charges were Spanish-surnamed. No misdemeanant during that period was represented by counsel. Additionally, a very substantial proportion of all civil cases where one or both parties was Spanish-surnamed was comprised of divorce or annulment actions. *See also* note 155 & § III(B)(2)(a) *infra*.

Why do most indigents in the sample counties fail to utilize the services of an attorney when confronted by a legal problem? The field survey of impoverished residents and conversations with attorneys in the San Luis Valley suggest three principal answers: (1) scarcity of resident attorneys in the two sample counties, (2) inability on the part of indigents to pay legal fees, and (3) failure to recognize many problems as solvable through legal recourse.

1. Scarcity of Attorneys

At the time of the field research for the project, only one attorney resided and practiced in either of the two sample counties.[118] Admitted to the Colorado Bar in 1925, this elderly gentleman still practices law in a tumbledown office behind a store on the main street of one of the target area communities. He professed to be overburdened with indigent cases, yet of the indigent residents of his community who were interviewed, only the middle-aged and elderly consistently indicated knowledge of his existence, reflecting perhaps the attorney's long tenure as county judge which terminated a number of years ago. Only a couple of indigent respondents — both over 50 years of age — mentioned that they had recently consulted this attorney regarding a legal problem.

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[115] Several respondents who apparently had been swindled by fast-talking magazine or house siding salesmen were informed by attorneys that nothing could be done since the purchase contract was legally binding.

[116] Without exception, however, divorced respondents reported that their attorney required a minimum fee of $100 prior to bringing suit. The responses from the attorney questionnaire corroborate this almost universal practice of the rural bar in Colorado. A divorce is viewed as a luxury, and the advance fee requirement is seen as a simple precaution. As one attorney from the Arkansas Valley in eastern Colorado stated, "when a woman runs out on you without paying, you don't feel very sympathetic anymore."

[117] Seventy-five percent of the attorneys responding to the attorney questionnaire stated that they approach the matter of charging fees to indigent clients somewhat flexibly, sometimes charging a small fee — usually $5 — sometimes nothing, depending upon the client's ability to pay. Very few stated that they always charge nothing, and even fewer said that they always charge the recommended minimum fee. Most attorneys stated that at least 60 percent of the indigents pay the total bill, 30 percent pay a portion of the bill, and only 10 percent never pay. Most of the attorneys — 62 percent — stated that they collected about as much as they had expected from their indigent clients.

[118] A young attorney had practiced for several years in one of the larger target area communities which was surveyed, but he had apparently pulled up stakes and headed for greener pastures in 1965. Another attorney who practices in Alamosa, has a temporary office in one of the target area communities, and periodically visits there for a day at a time. He and his brother, also an attorney, are the most widely known practitioners among the rural poor, but only a very few of the indigents surveyed were aware of his periodic visits.

With the exception of this attorney, the nearest lawyers are miles away from many of the residents of the two county region.[119] The obvious question for determination was, then, whether distance was a factor inhibiting rural indigents in the sample counties from seeking an attorney's aid when confronted by a recognizable legal problem. From the attorney questionnaire, 58 percent of the attorneys believed that the answer was "yes" to this question.[120] A Spanish-American attorney in Alamosa reported that he had indigent clients from all parts of the San Luis Valley, although it is difficult to determine to what extent his minority ethnic identity had prompted this result. Among the indigent class interviewed, responses were mixed. Most of those who had at one time consulted an attorney indicated that they would have consulted a resident attorney, had one been practicing in their community. For this group, however, distance had not inhibited an attorney contact. For respondents who had never dealt with an attorney yet who evidenced a confrontation with a recognizable legal problem at some time, only a very few stated *sua sponte* that distance or the lack of transportation was a significant cause for failure to take their particular burden to a lawyer's office; a more sizeable number so stated when the question was posed on the initiative of the interviewing team. Only one cautious conclusion, therefore, can be drawn: When a poor resident has recognized a particular problem as serious and involving legal ramifications, the distance factor is only one of several other factors which may cause hesitancy or failure to consult an attorney. It is a cumulative factor; rarely is it the sole factor.

The scarcity of attorneys in the sample counties appears also to inhibit attorney contacts by creating an information or reference gap. One of the student interviewing teams met with 16 members of the Lariat community action council in the town of Monte Vista during one of their monthly meetings. The purpose of attendance by the team was not to question these persons in the same manner or degree as was done with indigent residents of the target area communities,[121] but rather to ascertain through conversation whether significant differences in attitude, knowledge of legal resources, or proclivity to consult attorneys existed between residents of this community (in which there were more attorneys) and those where the survey was conducted. One notable conclusion resulted from this meeting: These particular residents of Lariat possessed a greater awareness of local legal resources than had the indigent respondents in Conejos and Costilla counties. Almost all were able to name one or more Monte Vista attorneys, whereas only a very few in the target area communities could claim similar ability.[122]

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[119] For almost all residents of Conejos and Costilla Counties, the nearest attorney is in the town of Alamosa, a distance ranging from 20 to 50 miles from the target area communities surveyed.

[120] The validity of this majority opinion may be questionable. As will be noted further § III(B)(2) *infra*, very few attorneys think of the class of indigents needing but not receiving legal services as greatly exceeding the class needing *and* receiving legal services. Thus, few are aware of the reasons why indigents may *not* come seeking their aid, thinking (and sometimes complaining) instead of the "many" who do enter the doors to their offices. Consequently, the rather large percentage responding affirmatively to this question may indicate a degree of pure speculation rather than verified observation, particularly in light of the rather inconclusive responses from indigents themselves.

2. Inability to Pay Fees

By far the principal reason mentioned by indigents surveyed for their failure to consult an attorney when confronted by a recognized legal problem was the inability to pay legal fees. This observation on its face is not at all surprising; poverty, by its very definition, connotes insufficient income, and procuring legal advice is often not in the same category of urgency among the rural poor as is adequate food, clothing, and shelter. Yet underlying this rather simple conclusion is a more complex observation: The *real* reason for the indigent's failure to consult an attorney is that he *believes* that he will be charged a fee in excess of the depth of his pocketbook; he does not *know* what he would actually be charged. Two specific findings from the empirical research buttress this assertion.

First, prior experience with an attorney creates a factual basis upon which the indigent respondent can guage his ability to afford subsequent experiences. Of the one-fifth of the indigents surveyed in the target area who had ever consulted an attorney, a large proportion had paid all or almost all of the fee charged. Except with regard to fees charged for divorces, only a vociferous minority felt that the fee charged for their particular problem was too high. In these cases, where the fee charged in the first encounter was felt to be beyond their means, the respondents uniformly indicated inability to pay as the reason for a later failure to contact an attorney. In the majority of cases, however, where the fee charged the first time was viewed as reasonable, inability to pay was generally not listed as the reason for the later disinclination to see an attorney. Thus, for those who had a factual basis upon which to determine what they would be charged by an attorney, only a few listed inability to pay as a reason for later failure to consult an attorney concerning a legal problem.

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[121] In fact, no effort was made to learn whether the Lariat residents attending this meeting were all classifiable as indigents under poverty-line standards. Apparently, though, all could be described as within the "poverty" class in the larger sense of that term as distinguished from the "establishment" class.

[122] Similarly, the Duke study found that over 70 percent of the sample group were able to name at least one of the three lawyers practicing in the county.

> Because of the small size of the community and the location of virtually all services in the county seat, lack of knowledge as to where a lawyer may be found, or who the lawyers are, does not seem to be much of a problem in the utilization of legal service. Anyone driving through the county seat on either of its two intersecting streets would have a difficult time missing one of the three lawyers' offices. For referral purposes, the state and federal agencies need only send persons across the street to allow them to choose an attorney from the entire county bar. This is certainly a significantly different situation from that experienced in urban areas where anonymity often obscures available services.

Note, *supra* note 9, at 525.

However, a substantial majority of indigents surveyed had never consulted an attorney. For this group, the factual basis by which to judge their ability to pay legal fees must be obtained vicariously. Very few of the respondents in this group possessed even an approximate knowledge of an attorney's schedule of fees. The few who did based their conclusion upon the experiences of a friend or family member who had consulted an attorney. It was this uninformed group — four-fifths of the respondents — which generally mentioned the inability to pay legal fees as a reason for failure to consult an attorney when confronted by a recognized legal problem.

The second specific finding which supports the proposition stated above comes from the statements made by attorneys themselves. The minimum fee schedule for legal assistance on an hourly basis is set by the San Luis Valley Bar Association at $25.[123] None of the attorneys interviewed in the Valley charge that rate to indigent clients. For a one-half hour office consultation, the most commonly stated charge was $5.[124] But, as alluded to earlier, even this sum is not inflexibly charged. Rather, most attorneys determine their fee based upon conversations with the poor client concerning his ability to pay. This flexibility was mirrored in comments attached to the returned attorney questionnaires. One attorney believed that local impoverished citizens came to his office in particular because he is "not tough with them about fees." Another stated: "We make no charge to Spanish-Americans when they are of the field worker class." To be sure, when the legal work for an indigent client consists of something more than simple advice or writing a letter, an attorney charges a proportionately higher fee, which may inescapably be difficult for the indigent to pay. Yet, it is apparent that almost all attorneys in rural areas of the state give the poor man a real financial break in setting legal fees.

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[123] The minimum fee schedule was adopted by the San Luis Valley Bar Association on December 7, 1967.

[124] The minimum fee for transfer of a deed is set at $10.00. The elderly attorney practicing in one of the two sample counties stated that he regularly charged only $3.50. He further stated that he regularly cut all recommended fees in half, except for divorce actions, when an indigent client was involved. *See also* note 117 *supra*.

Analysis of the reasons why the poverty class respondents who had never visited an attorney believed that they could not afford the legal fees is revealing. With one exception, all of the attorneys in the San Luis Valley are Anglo. A very high percentage of residents in the sample counties who are impoverished are Spanish-American.[125] All attorneys are therefore deemed to be members of the elite "establishment" class. Even where respondents confessed complete ignorance about all attorneys in the San Luis Valley, they invariably assumed that all attorneys are well-to-do members of the establishment class. The assumption derives from the pervasive influence of the communication media — radio, television, books, newspapers — which invariably picture an attorney as Anglo, well-educated, and with substantial income. In so viewing a lawyer's standard of living, it is incomprehensible to members of the poverty class that a "rich" attorney would charge a small fee for legal services.[126] Among the indigents surveyed who had a lawyer contact experience, even those complaining of an excessive charge implied that they did not really expect any less when initially seeking help. The typical Spanish-American indigent surveyed expects to be charged a substantial fee for legal advice. He may complain *post facto* when he learns that the legal solution was not particularly difficult and did not involve extensive preparation, yet this is the consequence of a natural a priori belief that the work-product of an attorney must flow from intricate and almost mystical manipulation of complex laws requiring substantial expenditure of time and labor.

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[125] *See* notes 39, 40, 64 & 65 *supra* and accompanying text.

[126] In conjunction with this view, some indigents who were surveyed indicated, albeit indirectly, that the poor man faces a hurdle in simply entering the clean, ordered, and expensively furnished office of an attorney — a "rich" man by their standards. This barrier is probably more imagined than real, and the underlying concerns were difficult to fathom. Perhaps the indigent is embarrassed by his own poverty. Perhaps it is simply the culturally inbred fear of the alien environment of an attorney's office. It was apparent from those interviewed who had consulted a lawyer at one time or another that the impressive trappings of an attorney's office were of some importance. On the other hand, the implicit feeling was that when an indigent finally decided that he must see an attorney, he expected to see a *good* attorney, *i.e.*, one who dressed like an attorney is presumed to dress and whose office looked like an attorney's office is presumed to look, complete with an impressive array of law books. This is certainly an enigmatic view of attorneys, for, if the lawyer places the indigent at ease by unpretentious office trappings, he then becomes less of a lawyer in the eyes of the indigent *because* of the unpretentious surroundings.

3. Failure to Recognize Legal Problems.

At least one previous study of the legal needs of the urban poor concluded that, for some types of problems, poor ghetto residents frequently fail to recognize the legal implications involved.[127] The same can generally be said of the rural indigent. When any particular problem is not seen as solvable by recourse to traditional legal resources, the indigent will obviously not consult an attorney for advice. The most commonly unrecognized legal problems are denial of welfare or Social Security benefits,[128] inability to repay a loan when the lender is a finance agency, failure of a landlord to repair rented premises,[129] requirement of public school children to pay book fees as a prerequisite to receiving grade cards or passing from one grade to the next higher,[130] ethnic discrimination, refusal by employer to pay wages, and wage garnishment. The most frequently recognized legal problems are domestic relations problems, criminal matters, purchase of unsatisfactory goods, and wills.[131]

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[127] *See* Sykes, *supra* note 7. Professor Schur asserts that Carlin and Howard ably document the fact that the poor are often hampered by their failure to realize the possibility of some legal solutions to their problems. E. SCHUR, LAW AND SOCIETY: A SOCIOLOGICAL VIEW 96 (1968). *Compare* Carlin & Howard, *Legal Representation and Class Injustice*, 12 U.C.L.A.L. REV. 381, 424 (1965).

[128] *See* text, § V(B)(2) *infra*.

[129] For resident indigent tenants, solution of problems with a landlord are typically resolved, if at all, by informal means. *See* text, § V(B)(3) & text accompanying note 193 *infra*.

[130] The Colorado statutes provide that any resident of the state between 6 and 21 years of age is entitled to attend public schools in the school district of which he is a resident without the payment of tuition. COLO. REV. STAT. ANN. § 123-20-3 (1963). Yet, every school district surveyed in Conejos and Costilla counties had a book fee requirement for all children attending public schools. The fees ranged between $3.50 to $13.00 per pupil, depending upon his or her grade level and the school district. One Spanish-American mother of 11 school children stated that she was required to pay as much as $75 per year in order that her children may be educated in the "free" public schools.

The statutory authority for local school boards to require book fees as a precondition to advancement in school or graduation is certainly vague. Every school board in the state has authority:

> (4) To provide for furniture, equipment, library books and for everything needed in school buildings, and for the use of the school board.
>
> . . . .
>
> (8) To provide books for indigent children on the written statement of the teachers that the parents of such children are not able to purchase them, and to furnish free text books for the use of all pupils when authorized to do so by a majority vote of the district as expressed at any regular or special meeting.
> (9) To require all pupils to be furnished with the proper and suitable books as a condition of membership in school.

COLO. REV. STAT. ANN. § 123-10-19 (1963).

It is certain, from the evidence gathered during the field research, that none of the impoverished parents or the teachers interviewed were aware that written authorization from the latter will result in free text books for an indigent pupil. It is safe to say that if one were to retain an attorney to contest a book fee bill, the school board would undoubtedly relent, principally because it is on shaky statutory and constitutional ground in the first place. Through ignorance, however, the rural indigent simply sacrifices enormously to pay the bill, only to receive another the following year. The practice is certainly an anathema to the spirit of free public education, and the great concern voiced about the book fee requirement from the many indigents interviewed should hopefully be heard in the school board rooms.

Attorneys responding to the attorney questionnaire listed the most commonly recognized legal problems confronting the poverty class as domestic relations, creditor-debtor, and criminal problems. As the most commonly unrecognized legal problems, the same three areas received the most frequent listing, with wills and estates as a fourth.[132]

A good example of the nonrecognition of legal problems by the indigent class surveyed is the wage garnishment or attachment problem. Several of the indigents surveyed in the target area communities had faced this type of problem; none had seen an attorney. Frequently, the response to the problem was inaction, or only a conference with the indigent's creditor or with his employer. By an informal process of give-and-take, a few indigents solved the problem by agreeing to pay the judgment debt on a flexible installment basis. On the other hand, some of these indigents were unable to resolve the problem informally, and they suffered serious legal injuries quite beyond those contemplated by the formal law. Two of them lost their jobs and had personal property attached and removed; a few others lost portions of their paychecks beyond what they would have lost had exemptions been filed. Clearly, the legal process of garnishing wages and attaching property to satisfy a judgment debt was a highly emotional and very serious problem for the residents involved.[133] Yet with the assistance of an attorney, much of the financial grief could have been spared.

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[131] For the last two listed problems, resolution by the indigent who faces such a problem is often through the informal means developed in more detail in § IV *infra*, rather than through an attorney. Thus, while possibly recognizing that these two types of problems are susceptible to legal resolution, many indigents knowingly choose to resolve them through other means.

On the other hand, the commonly unrecognized legal problems listed in the text generally remain unresolved, even when they are recognized. Since these types of problems typically involve a conflict between an indigent and a member of the establishment or a government institution, the injury which results from nonresolution of these legal problems is denominated as class injury, and they are discussed as such in detail in § V *infra*.

[132] The only explanation for this anomolous overlap between the recognized problems and the unrecognized ones is that most returned questionnaires from attorneys listed only one or two problem areas as recognized or unrecognized. And, no consistency was apparent among the responses, so that one attorney may have listed domestic relations as a recognized problem area and creditor-debtor as an unrecognized area, while a second would list the opposite. Hence, the sum total of all responses resulted in an overlap. Perhaps it can be said that the three types of legal problems most commonly taken to an attorney by the indigent class are domestic relations, creditor-debtor, and criminal matters, and a particular attorney's designation of any of the three as generally recognized or unrecognized is predicated exclusively upon his own practice and experiences with a limited number of indigent clients.

Under Colorado law, no order of attachment prior to judgment on any garnished debtor may issue for less than $20.[134] Wages may not be garnished until a complaint has been filed, the defendant has become subject to the jurisdiction of the court issuing the writ, and then only in aid of execution of judgment.[135] These provisions protect the indigent consumer against unknown garnishment and attachment. Furthermore, 70 percent of the "earnings, avails of health, accident or disability insurance, and the avails of any pension or retirement benefits" due to the head of a family, and 35 percent of such earnings in the case of a single person are statutorily exempt from garnishment and attachment.[136] And, such payments as aid to the needy disabled, [137] servicemen's pensions,[138] life insurance up to $5,000,[139] unemployment insurance payments, [140] old age assistance payments,[141] and workmen's compensation awards,[142] are statutorily exempt from garnishment or attachment. However, the defendant debtor is required, in order to perfect any exemption, to file with the county clerk a written claim of such exemption within 10 days after service of notice of the writ of attachment or garnishment.[143] In like manner, homes are exempt from attachment up to a valuation of $5,000 under the homestead exemption, but only if the owner has filed such an exemption.[144]

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[133] Loss of a job due to service of a garnishment writ on an indigent debtor's employer is particularly severe. If the indigent is seasonably employed in agriculture, he will lose wages during the peak earning season — planting and harvest time — which will be deeply felt during the slim winter months. In addition, the paucity of agricultural employers in the two-county region, dwindling further each year with increased mechanization, and the close knit informational circle among local farmers, will probably preclude the indigent debtor from securing another job. Hence, he is unemployed, with little hope of repaying his debt.

However, two factors mitigate against the seriousness of this problem for the rural indigents as a class. First, one provision of the Consumer Credit Protection Act, 15 U.S.C. § 1674 (1968), effective on July 1, 1970, *Id.* § 1671, prohibits an employer from discharging an employee on the ground that his earnings have been subjected to garnishment for any one indebtedness. In addition, court records from one of the two sample counties show that writs of garnishment or attachment in aid of execution are infrequently utilized by creditors, particularly in the county court where the jurisdictional limitation for suit is $500. Colo. Rev. Stat. Ann. § 37-13-4 (Supp. 1965). Two explanations seem plausible: First, the local businessmen in the region surveyed often know personally most of their customers. The high interrelationship of families and the sparse population account for this fact. Second, garnishment and attachment are generally ineffective remedies against an indigent debtor who is unemployed for most of the year and owns few assets. Although a substantial number of rural indigents own housing units, *see* note 75 *supra* and accompanying test, the valuation of these units is very low. For example, of the 195 occupied and unoccupied housing units in the Spanish-American barrio of Lariat, 130 were valued at between $0 and $2,000, 25 between $2,000 and $2,999, 18 between $3,000 and $3,999, 13 between $4,000 and $4,999, 6 between $5,000 and $5,999, and only three worth more than $6,000. The approximate real value of the units was calculated by multiplying the tax assessed value as established in 1965 by the Rio Grand County Assessor's Office by three, the multiple used by the Assessor's Office. E. Ahrens, *supra* note 27, at 63.

[134] Colo. Rev. Stat. Ann. § 77-1-9(1) (Supp. 1965).

[135] *Id.* § 77-1-9(2) (Supp. 1965).

[136] Colo. Rev. Stat. Ann. § 77-2-4 (1963). Additionally, Title III of the Consumer Credit Protection Act, enacted on May 29, 1968, exempts from garnishment 75 percent of any individual's weekly wages or his aggregate disposable earnings minus "the amount by which his earnings for that week exceed thirty times the Federal minimum hourly wages prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable," whichever is greater. Consumer Credit Protection Act, 15 U.S.C. § 1673 (1968). This exemption takes effect on July 1, 1970. *Id.* § 1671. *See generally* Clark, *The Revolution in Consumer Credit Legislation,* 45 Denver L.J. 679 (1968); Note, *Garnishment Under the Consumer Credit Protection Act and the Uniform Consumer Credit Code,* 38 U. Cinn. L. Rev. 338 (1969).

[137] Colo. Rev. Stat. Ann. § 119-6-15 (1963).

[138] *Id.* § 77-2-2(i) (1963).

The filing requirement for exemption from garnishment and attachment is the rub.[145] None of the group of respondents who had confronted this problem were aware of the advantages of claiming exemptions. One particular indigent widow asked during the course of her interview what could be done about a letter she had recently received from a collection agency threatening suit on an admittedly unpaid bill. When asked, among other questions, whether she had a valid homestead exemption on her home, she not only was mystified by the terminology but also was unsure whether she was the title owner to her property.

More examples of legal problems going unrecognized by the rural indigent could be given, but that would only belabor the point.[146] The rural poor tend to view the "law" as a tool of the establishment class.[147] For them, the "law," more often than not, is thought of only in terms of a policeman or state patrolman, a criminal charge, a judge and courtroom, a garnishment writ, a set of rules recited to deny welfare benefits, a bill collection letter, or a repossession of goods. For them, the "law" is always on the other side in any controversy. The impoverished rural resident is woefully ignorant of the protections and benefits which the law rightfully affords to all men, rich and poor alike.[148]

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[139] *Id.* § 77-2-2(m) (1963).

[140] *Id.* § 82-10-3 (1963).

[141] *Id.* § 101-1-12 (1963).

[142] *Id.* § 81-13-7(1) (1963). This is relatively unimportant, however, since the workmen's compensation chapter of the Colorado Code "is not intended to apply to employers of . . . farm and ranch labor . . . ." *Id.* § 81-2-6(4) (1963). A bill was introduced in the Colorado House of Representatives in 1969, House Bill 1427, to extend these benefits to farm and ranch labor, but the bill was postponed indefinitely in committee. Strongly opposing the proposed legislation were the potato grower interests in the San Luis Valley. Huber, *supra* note 31, at 8, col. 1.

[143] COLO. REV. STAT. ANN. § 77-4-1 (Supp. 1965).

[144] In Colorado, a homestead exemption may be perfected either in the deed itself at the time of the original filing with the County Clerk or by a marginal entry of "Homestead" written on the recorded instrument and signed by the title owner. COLO. REV. STAT. ANN. § 77-3-2 (1963). Since very few indigents' housing units are valued in excess of $5,000, *supra* note 133, and since a home and perhaps a car are often the only substantial assets owned by the rural indigent, there would be little for a creditor to attach, assuming that the indigent had filed a homestead exemption.

[145] In a California study, it was revealed that less than 10 percent of the debtors whose wages are attached ever file exemption claims. Brunn, *Wage Garnishment in California: A Study and Recommendations,* 53 CALIF. L. REV. 1214, 1217 (1965). Such a revelation prompted the Director of California Rural Legal Assistance to urge the necessity of a "determination of a means by which buyers are more likely to file claims of exemption so that part of their wages can be excepted from the attachment. . . . For example, claim of exemption forms might be served along with the writ of attachment so that the right to file a claim of exemption is brought to the attention of the defendant." Lorenz, *The Application of Cost-Utility Analysis to the Practice of Law: A Special Case Study of the California Farmworkers,* 15 KAN. L. REV. 409, 431 (1967).

[146] A methodology for systematically measuring the legal problem recognition capacities of the poor (among others) was utilized in the Duke study. *See* Note, *supra* note 9, at 509-21.

B. *The Establishment's Legal System: The View From the Top*

Members of the rural bar expressed through interviews and returned questionnaires a view of the capability and actual response of the formal legal system to the legal problems of the rural poor quite divergent from that expressed by the indigents themselves. The poverty-stricken are, in a word, cynical of the formal legal system as a means of bettering their collective lot. The rural bar quite obviously views the legal system from a different perspective. Before detailing the responses of these attorneys with respect to the actual operations of the formal legal system which affect the rural poor, however, a few observations of the general characteristics of the rural bar are in order.

1. General Characteristics of the Rural Bar

The most salient characteristic of the rural bar in the two-county area under study has already been mentioned — it is severely understaffed.[149] The most salient characteristic of the bar in other portions of the San Luis Valley and rural Colorado is that its members are solidly entrenched members of the establishment.

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[147] Former Supreme Court Justice Fortas, in an address given at a meeting of the Third Circuit federal judiciary, stated that the law has been an "alien force" to the impoverished class, a "system devised by the establishment — of the establishment — for the establishment." To this segment of America's population, "the law has been their enemy." Address Mr. Justice Fortas at the Third Circuit Conference, September 8, 1966.

[148] Mr. William Barvick, Director of Legal Services, North Central Region, Office of Economic Opportunity, capsulized very well the poor man's view of the law:

> Ignorance and misunderstanding surround the poor's view of the law. To them the law has a magical quality, lawyers are the magicians, and the victims of the lawyer's tricks are the poor. Lawyers are the masters of technicalities and technicalities stand in the way of fair treatment. They do not see the law as a reasonable means of resolving disputes or adjudicating rights. Instead, they view it as arbitrary, capricious, and unrestrained. The law is a policeman, a magistrate judge, and a welfare administrator, persons with unlimited power, from whose decisions there is no appeal. This is all part of the hopelessness associated with being poor.

Barvick, *Legal Services and the Rural Poor,* 15 KAN. L. REV. 537, 539 (1967). Another commentary described this duality in treatment by the law as *de facto* bias.

> A third type of bias in the law may be termed *de facto* bias. On paper the law treats rich and poor alike, but in fact the correlates of poverty make equality impossible. . . .
>
> *De facto* bias is pervasive because so many correlates of poverty such as indigency, ignorance or insecurity can serve as barriers to justice. In essence it is bias by default. It represents a failure of the law to take into account the differential capacity of rich and poor to realize the protections and benefits which the law provides.

Carlin, Howard and Messinger, *Civil Justice and the Poor,* 1 LAW & SOC'Y REV. 9, 21-22 (1966).

[149] *See* note 118 *supra* and accompanying text.

These attorneys are, of course, establishment by definition — by virtue of their possession of a body of knowledge which gives them authority within a specialized sphere. In addition, most of them are quite active in the leadership circles of their respective communities, particularly in the political arena. Most of the respondents to the attorney questionnaire had held or were presently holding public office. Of the 51 respondents, 45 were part or full time practitioners. The remaining 6 were district court judges. Of the 45, only 8 indicated that they had never held one of the following offices: district judge, county judge, district attorney, deputy district attorney, city attorney, or county attorney.[150]

Finally, they are employed primarily by other members of the establishment in the community. As would be expected, most residents of the sample counties who are classifiable as "establishment" members utilize attorneys when faced with a legal problem. They can more readily afford the legal fees, and their generally superior educational attainment creates an awareness of the necessity for orderly and proper resolution of legal difficulties. The attorney-contact experience of a business woman who owned one of two local grocery stores in one of the small target area communities surveyed is typical. With the advice and aid of an Alamosa attorney, she had recently transferred the entire assets and property of her store into joint tenancy with her cousin, a move motivated, she said, by the recent death of a third partner in the business, her brother, when the inventory of the store was frozen for accounting during probate. She had, in addition, employed the same attorney for collection of outstanding debts and for effecting an adoption. She felt that she had "wised up" to the necessity of utilizing attorneys in the business world, and she believed that the fees charged were more than fair.

In addition to employing attorneys for personal or business needs, members of the establishment, as the leadership class, retain attorneys as counsel for institutional groups. The Boards of County Commissioners for Conejos and Costilla counties each have an attorney on retainer as do the town councils for three incorporated communities in the area and the welfare boards of directors for each county. Incorporated water and sewage districts, at least one savings and loan association, and a Community Hospital retain attorneys. Several of these institutional groups have the same retained counsel. To be sure, the retainers are not large — usually around $200 a year — and the more difficult legal problems, such as incorporating a water and sewage district and issuing bonds for the indebtedness, are taken to the large Denver law firms, with the lawyer on retainer serving as local counsel. Yet individual members of these institutional groups have the opportunity to meet an attorney and occasionally view first-hand the legal process of problem-solving, an opportunity not presented in similar manner to those of the indigent class.

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[150] The high incidence of attorneys holding public office tends to exacerbate the already difficult problem of lack of attorneys in rural areas. District judges are forbidden by statute to practice law in any court. COLO. REV. STAT. ANN. § 12-1-14 (Supp. 1965). County judges of small counties, such as Conejos and Costilla, are permitted to practice law, but only in courts higher than their own and only in cases which have not been before a county court. *Id.* Moreover, a judge cannot have a partner acting as attorney or counsel in any court within his jurisdiction. *Id.* § 12-1-20 (Supp. 1965). District attorneys, their assistants, and their deputies do not, of course, appear as defense counsel in any court. In addition: "No attorney-at-law practicing law in the state of Colorado who is a member of a private law firm with which a district attorney, assistant district attorney, or deputy district attorney is associated may defend any person or persons who are being prosecuted by a salaried staff member of the office of said district attorney." *Id.* § 45-3-4 (1963). *See also* note 164 *infra*.

2. The View of the Rural Bar

The view which the members of the rural bar take of the resolution of the legal problems of the rural poor can essentially be summarized into three general attitudes which are held by a majority of them: (1) They all give appropriate obeisance to the attorney's obligation to represent the poor;[151] (2) they think that they have as much indigent work as they can prudently handle; and (3) they believe that the impoverished class in their region is adequately served by the existing legal structure. The extent to which these positions are accurate or justified can be evaluated in terms of some of the information collected by the attorney questionnaire, reported below.

a. Criminal Practice

At the time of the empirical research for this project, the sixth amendment guarantee of the right to counsel for indigents in all felony cases[152] was being implemented in the 12th Judicial district — the San Luis Valley — and throughout most of Colorado by appointment of counsel.[153] Since to the indigent the "law" is often thought of in terms of the criminal justice system, several questions in the attorney questionnaire were designed to delve into the involvement and attitude of the rural bar in fulfilling this critical obligation. The 45 practitioners responding to the questionnaire were assigned 170 criminal indigent cases in 1967. Of this total, 66, or 39 percent, were reported tried. Over the period 1965-67, the number of these assigned cases greatly increased, and the percentage which went to trial almost doubled. Thus, from the initial data, it appeared that the obligation of the members of the rural bar to represent indigents in felony cases was being fulfilled.

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[151] *See* ABA CANONS OF PROFESSIONAL ETHICS No. 31.

[152] *See* Gideon v. Wainwright, 372 U.S. 335 (1963), and its progeny extending the right to counsel to all critical stages of a felony case.

[153] As of January 1, 1970, the public defender system became a statewide operation under the auspices of the Colorado Judicial Administrator. Although funding for the initial year was sparse, totaling barely more than $1,000,000, plans for the system indicated expectations of opening 26 offices across the state. The authority for the statewide system is contained in COLO. REV. STAT. ANN. §§ 39-21-1 to 39-21-5 (Supp. 1969). Public Defenders practice in both the county and district courts of the State, and their presence will hopefully eliminate the assigned counsel system for indigent criminal defendants throughout the State. However, the court on its own motion or upon application of the Public Defender may still appoint counsel for particular cases. *Id.* § 39-21-5. For further discussion, see CONCLUSION *infra.*

However, it was also found that only a few attorneys in the rural communities were being allotted the responsibility of handling most of the assigned felony cases. For example, of the 170 cases, seven attorneys reported that they were assigned 10 or more such cases during that year. One reported an assignment load of 35 cases. On the other hand, 16 attorneys reported no assignments for 1967. The seven attorneys who reported a high frequency of assignments of indigent cases constituted only 16 percent of those responding to the questionnaire, yet they were assigned 79 percent of the reported cases. Even more significant is the fact that 82 percent of the 66 assigned cases which went to trial in 1967 were handled by these same seven lawyers.

These results provide strong evidence that the assignments of indigent cases were not objectively rotated among eligible members of the bar in rural communities. An independent examination of district court records for Alamosa and Costilla counties fully corroborated this conclusion. Three attorneys practicing in Alamosa were assigned 64.3 percent of all indigent cases for which the two counties disbursed payments during the years 1965-67. All but eight of the 80 cases were assigned to six attorneys. Those six represented about one-half of the legal population of Alamosa and Costilla counties.

Surprisingly, however, 75 percent of the respondents to the questionnaire, when asked specifically to state their opinion on the matter, believed that assignments *were* objectively rotated. Of those who were assigned less than 10 cases, 83 percent expressed this view, while those who were assigned 10 or more cases were evenly split on the question. Although the sample was small, it seemed that the fewer cases an attorney was assigned, the more likely he was to believe that indigent felony cases were objectively rotated. The stated circumstances by which some attorneys avoided court appointments to represent indigents ranged from claims of conflicting interests (district and deputy district attorneys) or heavy workloads to such personal reasons as old age or ill health.

Thus, while the data indicated that the members of the rural bar were by and large performing the task of representing indigent felony defendants, some were performing more often than others. Moreover, the fact that the tasks were being performed does not necessarily mean that they were being performed adequately in every case. When preparation is patently inadequate, the indigent defendant may very well know it, and this may profoundly affect his particular view of the criminal justice system. One of the VISTA volunteers in a sample county related a story of a Spanish-American teenager from an indigent family who had been charged with car theft. He approached the volunteer one morning seeking transportation to the district courthouse, a distance of about 13 miles, on the day set for his trial. While traveling in the volunteer's car, he stated that the attorney assigned as his counsel had never contacted him about his case. The attorney and his teenage client met for the first time for a brief period prior to trial. The trial itself was brief, the boy was found guilty of the charge, and he was placed on probation. The volunteer stated that the boy was very bitter about the affair, believing that he had been prejudged and that his attorney was only interested in going through the motions of a defense and then returning to his private office to deal with clients who could pay for services rendered.

The incident related by the VISTA volunteer may be an abberration; yet it points out the possible consequences of inadequate preparation by assigned counsel. A majority of the attorneys interviewed in the San Luis Valley agreed that they did not have sufficient time to prepare adequately some of the more complex felony cases to which they were assigned. If any trend was discernible, it was that the younger attorneys who were assigned more indigent felony cases than the older members of the bar tried more of their assigned cases and indicated more frequently that they had sufficient time to prepare those cases assigned to them. Of the seven attorneys who reported on the questionnaire that they had been assigned 10 or more cases in 1967, six thought that preparation time was adequate, while the majority of attorneys who were assigned fewer than 10 cases felt otherwise. Most attorneys — 70 percent of the questionnaire respondents — believed that compensation allotted them by county funds for indigent felony representation was generally insufficient, considering the time and effort expended. Attorneys who were assigned fewer than 10 cases for 1967 expressed this belief by a 2 to 1 ratio, while the proportion was 6 to 1 among the attorneys who were assigned 10 or more cases. Thus, the same attorneys who perform their tasks in the criminal area more often are less likely to feel that they perform them adequately.

b. Civil Practice

In the civil area, rural attorneys as a group also recognize a general obligation to serve the legal needs of the poor, charging, if at all, more or less according to their ability to pay.[154] However, their attitudes may vary according to the type of legal problem involved. For instance, as a general rule, the attorneys interviewed reported that they would not take a divorce or annulment action until the minimum recommended fee of $100 was paid — in advance. One possible explanation for this practice is that domestic relations problems are the most frequently taken by the rural poor to attorneys. Divorce, support and alimony, and child custody problem areas were cited by respondents to the attorney questionnaire respectively as the first, third, and fourth most prevalent legal problems among rural indigents.[155] This observation is in accord with statistics from

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[154] *See* notes 117 & 124 *supra.*

[155] The following table represents the responses of the attorneys to question 17 of the attorney questionnaire, reprinted in the APPENDIX *infra*. The legal problem areas most frequently encountered by the indigent rural population of Colorado, in the opinion of the rural bar, are listed at and near the top of the list. The ranking was determined from the total number of attorneys who responded that either a *substantial* number or a *few* indigents had encountered the particular problem area, rather than *none*.

	Number of Indigent Problems per Attorney Responses			
Type of Legal Problem	**Substantial**	**Few**	**None**	**S+F Total**
MARITAL — Divorce	29	15	0	44
UNSATISFACTORY GOODS — INSTALLMENT PURCHASE — From Traveling Salesmen	20	23	1	43
MARITAL — Support and Alimony	27	15	0	42
MARITAL — Child Custody	19	23	0	42
DEFAULT — Repossession of Installment Goods	21	19	2	40
DEFAULT — Payment of Dept.	19	20	2	39
WAGE COLLECTION — Garnishment, Employer Not Paying Full Wages	10	26	5	36
HOUSING — Drafting Deeds & Other Property Papers	13	20	7	33
WELFARE — Unable to Get on Rolls	5	28	10	33
LAW ENFORCEMENT — Probation & Parole	11	21	7	32
WORKMEN'S COMP. — Job Injuries	7	25	21	32
HOUSING — Landlord/Tenant	2	29	9	31
LAW ENFORCEMENT — Atty. for Criminal Cases Other Than Felonies	8	20	9	28
COLLECTING MONEY — Loaned by Indigent to Another	1	25	12	26
LAW ENFORCEMENT — Posting Bail	8	17	13	25
LAW ENFORCEMENT — Discrimination by Local Police or Sheriff	3	22	16	25
ESTATE PLANNING — Wills	1	24	14	25
UNSATISFACTORY GOODS — Purchased with Cash	3	21	17	24
WELFARE — Unable to Afford Appeal	5	18	14	23
UNSATISFACTORY GOODS — INSTALLMENT PURCHASE — From Local Businesses	3	18	15	21
UNSATISFACTORY GOODS — INSTALLMENT PURCHASE — From Nat'l Chain Stores	1	11	22	12

other portions of the country[156] and from the district court records of the sample counties.[157] A further explanation for the requirement of an advance fee rests in the attitude of the rural bar toward a divorce case. The attorneys interviewed invariably expressed the view that a divorce is a luxury and should not lightly be countenanced. Thus, the advance retainer is thought to cull the serious and well-considered application from the impassioned and improvident request coming on the heels of a familial quarrel. Finally, the advance retainer insures the collection of the fee, a recognition by attorneys that indigent divorcees may be reticent about paying after the court decree has been issued.

In addition to recognizing, at least in general terms, an obligation to serve the legal needs of the poor in the civil area, the at-

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Type of Legal Problem	Number of Indigent Problems per Attorney Responses			
	Substantial	Few	None	S+F Total
UNSATISFACTORY GOODS — INSTALLMENT PURCHASE — From Discount Stores	2	9	24	11
DISCRIMINATION — Job	1	6	31	7
WELFARE — Forced to Accept Unsuitable Employment	0	6	32	6
DISCRIMINATION — Housing	0	5	32	5
DISCRIMINATION — Voting	0	2	36	2

In one open-ended question, lawyers were asked to list the five most prevalent legal problems of the indigent class in their community. The table below shows the responses to that question. The ranking was determined by assigning point values of 1 to 5 for the hierarchy of responses, then tabulating the total point values.

Type of Legal Problem	Total Points
Domestic Relations	197
Creditor/Debtor	122
Criminal	81
Drinking	23
Traffic	19

The active judges who responded gave more weight to criminal problems; for them, criminal problems totaled 22, domestic relations 18, and creditor/debtor 12.

[156] From its 1966 Composite Report, the total number of domestic relations cases handled by the Los Angeles Neighborhood Legal Services Society, Inc., for the calendar year 1966 was 4,550, a total of 44 percent of all cases handled. The second most common category of problems handled was financial and bankruptcy, totaling only 851 cases or 8 percent of all cases. 1 CEB LEGAL SERVICES GAZETTE 4 (January 1967). "Recent statistics indicate an extremely high percentage of domestic cases being brought to legal services offices. . . . [S]uch a caseload only reflects that family problems of the poor have long been ignored." 1966 CONFERENCE PROCEEDINGS, NAT'L LEGAL AID AND DEFENDER ASSOC. 2.

[157] In both of the sample counties, divorce cases comprised a substantial majority of all civil actions filed, with money demands being second. Almost all of the divorce cases involved Spanish-surnamed persons. To be sure, the court records do not state the economic status of the parties, but the frequency of divorce cases involving Spanish-surnamed parties would nevertheless suggest the conclusion made.

torneys interviewed usually proffered the observation that the impoverished class in the area was adequately served by the existing legal structure. The impression was given to the interviewers that no indigent was "turned down" when he sought legal assistance. In fact, the attorneys interviewed uniformly stated that they had more indigent cases than they wanted and certainly as much as they could prudently handle.

In response to a question concerning their indigent civil practice, 83 percent of the attorney respondents reported that they devoted 10 percent or more of their practice to indigents. Thirty-nine percent indicated that they devoted more than 20 percent of their time to this type of client, and this group included a majority of those seven attorneys who were assigned more than 10 indigent felony cases in 1967. In addition, 48 percent of the respondents believed that, in their own particular community, poor residents with legal problems generally tend to come to them (or to their firm) more than to other local attorneys. Forty-two percent felt that indigents consult them about as often as they do other attorneys. Only 10 percent believed that they were consulted less often than other attorneys. Also, several present or former district attorneys reported on the questionnaire that local indigents viewed them as a sort of all-purpose poor man's lawyer. One respondent stated: "I was District Attorney 16 years and people considered I was attorney for the people of the State of Colorado, and I did not tell them differently, and many of them still believe I should represent them." Another reported: "Because of DA status, 'poor' comes [*sic*] to me as a 'public official' regardless of the fact that the problem is not criminal in nature." One woman indigent interviewed in a target area community corroborated this impression. The woman adamantly believed that the district attorney is duty-bound to provide free legal assistance to all indigents in the judicial district, regarding civil matters as well as criminal. The district attorney's refusal to proffer free legal assistance in civil matters had disturbed a few community residents who held views akin to the woman interviewed.

The sources of the attorneys' indigent practices were also investigated. Most of the attorneys responding to the questionnaire stated that fewer than 20 percent of their indigent cases were referred to them by other lawyers in their community. From the field interviews, it is apparent that the San Luis Valley lawyers receive few referrals from governmental agencies which deal with the poor. The Colorado Civil Rights Commission office in Alamosa is a limited exception. It reported a number of referrals, but only because its limited statutory jurisdiction[158] precludes any formal assistance to the many indigents who come seeking help in some matter other than employment or housing discrimination. Occasionally, attorneys stated that they received referrals from the office of the Clerk and Recorder of the several counties, although they noted that the clerks in both counties under study were prone to perform the simple legal tasks themselves.[159]

Most of the indigent cases which an attorney handles are either referrals from nonlawyer individuals in the community or simply walk-in clients. When asked to speculate from their own community experience whom the poor first seek out when confronted by a legal problem, 34 percent of the respondents to the attorney questionnaire stated a friend or relative, 25 percent said a lawyer, 10 percent mentioned the police, another 10 percent mentioned a social worker, and less than 5 percent were reported for each of the following: minister or priest, district attorney, judge, and mayor. The interviews with the impoverished class in the sample counties would strongly suggest that few indigents go directly to an attorney when confronted with a legal problem. The almost universal pattern mentioned by those indigent residents who had contacted an attorney was at least a recommendation, a concurrence, or perhaps a referral to an attorney by some other individual in the community. Under these circumstances, the reputation of an attorney or firm for helping the poverty class and the length of tenure of that attorney or firm in the particular community are influential factors in determining where the indigent will eventually go with his legal problem. One attorney reported that "our firm has been established 34 years and we feel we enjoy the confidence of the community." Another said, "I have been in practice many years and I encourage them to come see me."

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[158] The Colorado Anti-Discrimination Act of 1957, Colo. Rev. Stat. Ann. §§ 80-21-1 *et seq.* (1963), created the Colorado Anti-Discrimination Commission, *id.* § 80-21-3, with specific authorization to remedy discrimination in employment. *Id.* § 80-21-6. The name was changed to the Colorado Civil Rights Commission in 1965. Colo. Rev. Stat. Ann. § 80-21-5 (Supp. 1965). The Alamosa office is a regional office of the Commission. The Colorado Fair Housing Act of 1959, *id.* §§ 69-7-2 *et. seq, as amended,* authorizes the Commission to remedy discrimination in housing. *Id.* § 69-7-5. Finally, Colorado's public accommodations law was amended in 1957 to bring the enforcement of public accommodations discrimination within the jurisdiction of the Colorado Anti-Discrimination Commission, since designated the Colorado Civil Rights Commssion. Colo. Rev. Stat. Ann. §§ 25-3-3, 80-21-5 (1963). *See generally* Penwell, *Civil Rights in Colorado,* 46 Denver L.J. 181 (1969); Comment, *Investigation Procedures of the Colorado Civil Rights Commission,* 40 U. Colo. L. Rev. 119 (1967).

[159] One statute provides that any person who is not licensed by the Supreme Court of Colorado to practice law and who does so practice shall be deemed guilty of contempt. Colo. Rev. Stat. Ann. § 12-1-7 (1963). The predecessor to that statutory admonition was originally passed in 1905. *See generally* Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 312 P.2d 998 (1957), and note 167 *infra.* Thus, when the county clerk of one of the two sample counties stated to a student interviewing team that he had recently quit the practice of drafting deeds because of some unspecified "recent law," it is more likely that he was responding in light of the law orientation of his interviewers.

Information from sources other than the county clerks themselves indicated not only that the clerks and perhaps other county officials are still performing the routine legal work of drafting simple instruments but that the quid pro quo for such services is very small — usually about $1.50.

One final observation may be gleaned from both the personal interviews with members of the San Luis Valley bar and the data obtained by the attorney questionnaire survey: Because rural practitioners, almost without exception, felt sated with indigent clients, thev seemed to believe *ipso facto* that the poor are adequately served. The number of rural indigents who seek legal advice is equated with the number of all rural indigents who are confronted by legal problems. However, the field survey of the rural poor in the two sample counties belies this assumed identity: A substantial quantum of legal problems of indigents never find their way to a lawyer's office.

IV. THE INFORMAL LEGAL SYSTEM

As is apparent from the preceding section, the formal legal system is not utilized to any great extent by the rural poor because of their ignorance of the means of access to, and the actual financial costs of, professional assistance. The small minority of indigents who do take their recognized legal problems to an attorney seem to provide the rural bar with all of the indigent legal work which they feel they can prudently handle. In terms of the resources of these attorneys, their point of view may be justified. However, the only types of indigent problems which appear in an attorney's office regularly are domestic relations problems and criminal matters. From the indigent's point of view, the substantial majority of their legal problems — both recognized and unrecognized — are not resolved through recourse to the formal legal system. The central concern of this study and the subject matter of the instant section is a delineation and analysis of the avenues of reaction by the indigents surveyed to the problems which were *not* taken to an attorney's office. In a very broad sense, research revealed three separately definable methods by which the rural poor in the sample counties deal with a legal problem, other than by a lawyer's help. First, the indigent may seek out a confidant in the community for advice and assistance. Second, he may employ various forms of self-help and interpersonal dealing, depending upon the character of the particular problem. Finally, he may, by choice or by chance, do nothing. These methods are considered seriatim.

A. *The Role of the Confidant*

When a rural Spanish-American indigent does not recognize that a particular problem entails legal ramifications, or when, irrespective of recognition, he fails to seek the aid of an attorney for any number of reasons, the confidant becomes an important and valuable secondary source of assistance. The term "confidant" is used here in a generic sense, referring to persons in a rural community who, through a unique combination of intelligence, experience, concern, and public trust, are advisors of their own initiative to the impoverished class.[160] The continued existence of this kind of individual with a concern for and involvement in the plight of his indigent neighbors is probably traceable to the *patron* traditions of early American, Spanish, or Mexican settlements.[161] Indeed, there is really no

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[160] This not to say that persons acting in a confidential and advisory capacity in rural communities provide beneficial advice and assistance only to the poor. On the contrary, there are in every rural community surveyed certain "city fathers" whose experience and expertise have made their judgments revered by the ordinary citizenry — the well-to-do as well as the poor. The term "confidant" is used here to denote those persons whose advice and assistance is particularly coveted among the impoverished class because of their special rapport with and concern for the problems of that class; the confidant is a person with whom the rural indigent can identify. That the confidant may advise and assist his peers among the establishment class is likely, but it is irrelevant to the purposes of this section.

[161] The *patron-peon* system was based on the feudal relationship between a master and his servant and existed throughout Latin America, including what is now the American Southwest. The relationship was originally a reciprocal one whereby the owner of the land (*patron*) supplied his workers (*peones*) with tools or food or housing while they, in turn, owed him a certain amount of labor. Additionally, the *patron* took an interest in the personal problems of his workers and their families. It was not infrequent for a single *patron* to be a godfather to hundreds of children born to workers on his land. Without any implication of social equality, then, the relationship was highly familial and personalistic. To have the protection or backing of your *patron* was simply to be in the right. For an account of present *patron-peon* relationships see, Gillen, *Some Signposts for Policy,* in Social Change in Latin America Today 36-39 (1960); J. Busey, Latin America, 7-8 (1964); W. Schurz, Latin America 303-07 (1964); O. Lewis, Life in a Mexican Village: Tepoztlan Revisited 111-12 (1951).

The relationship was frequently abused and resulted in a form of economic slavery known as peonage. The worker would become indebted to the landowner and tied to the land while the debt existed. The landowner, of course, would see to it that the *peon* would never erase his debt thus forcing the *peones* to live in the deepest poverty. This practice seemed to be particularly prevalent in Mexico. *See, e.g.,* H. Parkes, A History of Mexico, 98-99 (1960); E. Gruening, Mexico and its Heritage 118-23, 136-38 (1928).

In what is now the American Southwest, according to Dr. Daniel T. Valdez, the *peones* were dependent on the *patrones* for virtually all aspects of their livlihood, including the dispensation of "legal" advice and the resolution of "legal" disputes. In return the *peones* provided their labor. A tradition was thus established by which the *peones* could look at their *patrones* for the types of legal services now provided by the legal system.

Two other groups constituted the elite in early Spanish colonial society in the American Southwest — the clerical class and the rising merchant class. When the *patrones* became unavailable or inaccessible to the *peones* or other lower classes, the latter were able to transfer the relationship established by the tradition, and they began to look to the priests and the merchants for advice. This transference was so complete in some instances that many members of the lower classes referred colloquially to certain members of the merchant class as *patrones*. It is not surprising then that even today members of the impoverished Spanish-American class in rural portions of the Southwest look to more elite members of the community for legal advice and counseling. Based on an Interview with Dr. Daniel T. Valdez, Chairman, Division of Behavioral Sciences, Metropolitan State College, Denver, Colorado.

For a somewhat lighter, fictionalized, account of how the *patron-peon* relationship has survived in the American Southwest, *see also* N. Otero, Old Spain in Our Southwest, 9-38 (1936); R. Bradford, Red Sky at Morning 117-18 (1968). There has also been some speculation about the impact of the *Patron-peon* relationship on modern politics in the American Southwest. *See, e.g.,* Russell, *New Mexico: A Problem of Parochialism in Transition,* 30 Am. Pol. Sci. Rev. 385-87 (1936); Russell, *Racial Groups in the New Mexico Legislature,* 195 Annals 62-71 (1938).

comparable counterpart to the confidant in the Anglo segment of the rural area studied; it appears to be uniquely Spanish-American, at least insofar as it is an established institution in the culture of rural poverty.[162] The high incidence of Spanish-Americans living in poverty in the sample counties contributes to the ethnic nature of the confidant system.

The following is a description of a typical confidant in the two counties studied. There may be exceptions to some of the described traits, but there is one essential characteristic common to all community residents who can be called confidants: They have generated a high degree of trust and confidence among members of the poverty class. This fiduciary status is the essence of the position, and it in turn engenders continued reliance by many indigent residents upon the confidant's considered judgment and advice. A confidant is always considered to be a member of the "establishment" class in his particular community. Since class distinctions have previously been described as based upon criteria broader than level of income,[163] the inclusion of a particular confidant within the establishment may be for reasons other than his income. For example, age, experience, and excellent common sense were the hallmarks of one elderly gentleman in a target area community whose advice and judgment were esteemed among a number of the local indigents who were interviewed. Yet that confidant lived on his social security check, hardly the calling card of most establishment members. The reason for this higher class characterization by the community may be the very fact that his advice and judgment are esteemed — giving him, in a broad sense, an aura of authority. The characteristics of a person upon whom the poor man relies — such as knowledge and experience in matters pertinent to his problems — are essentially the same characteristics which mark a person as a cut above the poverty class.

Generally, the confidant has a higher educational achievement level than most other residents of his community, but it is usually a combination of education and practical experience that marks a person as a confidant. And the consistent correctness of the confidant's advice or aid is essential in order to prevent erosion of the indigent class' confidence in his ability and willingness to help them. The confidant is often a long-time resident of the community, and his family ties with a number of other community residents may be another rung in the ladder of public confidence.

Because of his concerned nature, the confidant is often heavily involved in local civic affairs. Occasionally he is a political leader, a priest, a mayor, a welfare official, or even the county judge;[164] often he is a local businessman. He has embarked on an open-door policy for the indigent community. He is available anytime to counsel anyone who seeks him out for advice or aid. In short, then, the typical confidant is Spanish-American, educated, middle-aged, active in community affairs, has an adequate or better income, is a life-long resident of the San Luis Valley, and is a person who is more than a little concerned with the problems, legal and otherwise, confronting the poor.

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[162] For a comparison between the confidant and the community leaders interviewed in connection with the Duke study of the legal problems of the rural poor, see note 180 *infra*.

[163] See text, § II(F) *supra*.

One particular confidant in a larger target community was a jack-of-all-trades. He dealt in realty, was an insurance salesman, completed tax returns in the spring, and, for a number of years, drafted deeds and wills for local residents. On three different occasions during the one and one-half hour interview with him, local Spanish-Americans entered his establishment seeking advice on some pressing matters. He related some of the recent occasions where he had been called upon for assistance: they ranged from advice on preparing income tax forms to telephone calls to the welfare office to find out why a certain person had been refused benefits. Creditor-debtor problems are common, he said, and he often tried to negotiate a more equitable and less burdensome financial arrangement for repaying a loan or purchasing a piece of merchandise where the indigent seeking help is otherwise deserving.

Finally, as was likewise stated by the county clerk,[165] this jack-of-all-trades claimed to have recently abandoned the practice of drafting legal instruments. His awareness that the student interviewers were studying law may well have contributed to his admission. It is likely that the practice continues: The owner of two bars in a small neighboring community stated that the deeds for his business properties, his home, and for additional land outside of the community, in addition to his will, were all drawn by this jack-of-all-trades.

1. Drafting Legal Instruments

Not all of those persons in the area surveyed who acted, to greater or lesser degrees, as confidants to their indigenous poverty class drafted legal instruments. Indeed, that function appears to have been assumed by a few confidants whose daily business or trade brought them into some contact with legal instruments. The service performed by this subgroup of confidants in drafting simple legal instruments is surely a boon to their indigent clientele. By employing printed or sample forms, the lay confidant can provide a service at a cost, if any, substantially below that charged by an attorney.[166] Moreover, in the region surveyed, where distances to the nearest attorney are often great, a particular confidant may be willing and able to draft a simple deed on a printed form for a poor neighbor who knows and trusts him.

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[164] The county judge is included because, in both Conejos and Costilla counties, the judge is not a lawyer. In fact, the judge of Conejos county informed his interviewers that he would resign his position if an attorney moved into the county, so that the new attorney could be appointed as judge.

The suggestion has been made by several persons independently familiar with social conditions in southern Colorado that the confidant system, like the earlier *patron* system, see note 161 *supra,* functions on the basis of reciprocal relationships, much like modern political ward systems. However, for several reasons including resource limitations, this question was not explored fully in this study. To be sure, many of the confidants were explicitly hoping for reciprocity in political terms; but the reported cases did not permit a generalization along these lines.

[165] *See* note 159 *supra.*

In 1957 the Colorado Supreme Court held that the preparation of deeds and other legal instruments relating to realty by a layman constitutes unauthorized practice of law.[167] Yet the court refused to enjoin the licensed real estate brokers who were defendants in the suit from preparing, in the regular course of their business and at the behest of their customers, the described legal instruments, when so completed as part of a transaction involving real estate. The court recognized that the realtors were engaged in a lawful business, that they were required by statute to take an examination before licensing,[168] that they prepared papers or gave advice only to their customers without charge other than the usual broker's commission, and that this was done only in connection with real estate transactions then being handled by them. The court also recognized that the practice was not contrary to the public interest but was in fact a desirable and necessary service accepted and enjoyed by the public for many years and that the weight of authority in other jurisdictions was split. In one particular paragraph, the court candidly recognized the very practical factors which would justify the denial of the injunction sought by the bar association:

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[166] Compare the typical fee mentioned by persons in reference to deeds drafted by county clerks. $1.50, *supra* note 159, to the minimum fee for that service as recommended by the San Luis Valley Bar Association, $10, *supra* note 124.

[167] Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n., 135 Colo. 398, 312 P.2d 998 (1967). The court held that "the preparation of receipts and options, deeds, prommisory notes, deeds of trust, mortgages, releases of encumbrances, leases, notice terminating tenancies, demands to pay rent or vacate by completing standard and approved printed forms, coupled with the giving of explanation or advice as to the legal effect thereof . . ." constitutes the practice of law. *Id.* at 411, 312 P.2d at 1004-05. Previous decisions of the Supreme Court of Colorado held that the drawing of a will by one not licensed to practice law constitutes unauthorized practice of law punishable by fine, whether done for compensation, People *ex rel* Attorney General v. Newer, 125 Colo. 304, 242 P.2d 615 (1952), or not for compensation, People *ex rel* Attorney General v. Woodall, 128 Colo. 563, 265 P.2d 232 (1954); People *ex rel* Attorney General v. Jersin, 101 Colo. 406, 74 P.2d 668 (1937). *See generally* 5 V. DITTMAN, COLORADO PRACTICE § 107.6 annot. (1968). The *Conway-Bogue* decision went on to state that "a person engaged in the unlawful practice [of law] may be punished for contempt, and may also be enjoined from further similar unlawful action . . . ." Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 408, 312 P.2d 998, 1003 (1957). This authority for contempt power lies in COLO. REV. STAT. ANN. § 12-1-17 (1963), which provides that any person who is not licensed by the Supreme Court of Colorado to practice law and who does so shall be deemed guilty of contempt. Other than misrepresentation by a layman that he is an attorney and appearance in court by one not licensed and not acting *pro se* but as counsel, the statute does not define unauthorized practice of law. The court in *Conway-Bogue* further delineated that definition.

[168] COLO. REV. STAT. ANN. § 117-1-1 (1963).

> The testimony shows, and there is no effort to refute the same, that there are three counties in Colorado that have no lawyers, ten in each of which there is only one lawyer, seven in each of which there are only two lawyers; that many persons in various areas of the state reside at great distances from any lawyer's office. The testimony shows without contradiction that the practices sought to be enjoined are of at least 50 years uninterrupted duration; that a vast majority of the people of the state who buy, sell, encumber and lease real estate have chosen real estate brokers rather than lawyers to perform the acts herein complained of. Though not controlling, we must make note of the fact that the record is devoid of evidence of any instance in which the public or any member thereof, layman or lawyer has suffered injury by reason of the act of any of the defendants sought to be enjoined.[169]

The reference by the Colorado Supreme Court to specific practical factors to be considered in the practice of law by realtors is particularly apropos to the institution of local confidants in the rural area surveyed. Their close proximity to those in need of services and the willingness of some to perform a function which printed or sample forms have made much simpler for little or no cost fills a necessary void in the relationship between the impoverished class and the technicalities of the law. And the student interviewers could find no evidence — from the confidants themselves, their indigent clientele, or the attorneys aware of the legal services performed by some confidants — that any indigent or member of the public had been injured by the lay legal services.

2. Dispensing Information

Confidants form the backbone of the informal "legal" system for the rural poverty class, not so much because of their drafting of legal instruments, but principally because of the other more common forms of assistance they provide. The most common is undoubtedly dispensation of information upon request. One undeniable feature of penury is the low educational level of those persons trapped within it.[170] Thus, problems having a legal flavor which may be complex to the businessman may be baffling to the indigent. But the businessman, if asked, may fully explain the nature of the problem to the indigent so that the latter can deal with it. A good example of the type of problem to which this explanatory service is especially germane is the income tax return. Although an indigent may have to pay little or no income tax, he is still required to file a return if his gross annual income is $600 or more.[171] The jack-of-all-trades referred to previously stated that he is generally beseiged around late March and early April of each year by persons, many of whom are poor, asking that the proper procedure for completing their income tax forms be explained to them. To be sure, he actually completes returns for some persons, charging an appropriate fee. For residents who are poor, however, his standard procedure was to explain how to complete the simple Form 1040A, to let the indigent do all or almost all of the figuring and writing, and to charge nothing for his aid.

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[169] Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n, 135 Colo. 398, 415, 312 P.2d 998, 1007 (1957). Other commentaries on the legal profession have noted the absence of harm to the public when an experienced layman drafts legal instruments. Professor Quintin Johnstone of Yale Law School has written: "Nor are there many instances of persons being harmed from having laymen do their legal work." He adds that there is a "public benefit from much of the lay competition that now exists. Lay legal services often are performed at lower cost than if the work were done by lawyers." Q. JOHNSTONE, LAWYERS AND THEIR WORK 194 (1967). In his controversial book criticizing the legal profession, Murray Teigh Bloom states: "For several months I tried to find serious instances of such injury and loss suffered by the public [due to the unauthorized practice of law by laymen in filling out printed legal forms]. I couldn't. I finally stopped trying . . . ." M. BLOOM, THE TROUBLE WITH LAWYERS 112 (1968).

[170] *See* note 91 *supra* and accompanying text.

A complete list of all subjects of information which were mentioned by confidants or indigent residents interviewed in the target area communities as having been discussed as part of this very valuable and informal process of aiding the poor through the confidant's dispensation of information would unduly lengthen this discussion. Moreover, the subjects vary with the competence and expertise of each particular confidant. An explanation of the meaning of the small print on an installment sales contract may be the subject of inquiry to a long-time businessman-confidant in the community; an explanation of the proper procedure for an indigent woman to apply for Aid to Families with Dependent Children may be made by a sympathetic caseworker out of the county's welfare office; an explanation of the practical meaning and effect of a proposed city ordinance may be given to an indigent concerned with his franchise by a local political party chief or one of his informed Indians; an explanation of the means of obtaining federal food stamps may be asked of an Anglo VISTA volunteer who has been at least partially accepted into the tightly-drawn circle of trust within the Spanish-American poverty community.[172]

3. Dispensing Advice

Confidants also serve in an advisory capacity to the indigent class. This function is to be distinguished from the explanatory service just discussed. For example, a confidant may explain the meaning and ramifications of the express warranty terms of an installment sales contract for a clothes washing machine purchased by an indigent. Or he may go further and advise the indigent purchaser, on the basis of given information, if the machine has inexplicably malfunctioned within the warranty period and the seller has refused to recognize his contractual obligation, to contact the seller again and try to obtain the necessary repairs, but if all else fails, to stop making payments on the machine until the warranty is honored.[173] When a confidant thus assumes the cloak of an advisor to the rural poor, he steps out of the shoes of neutrality and into the shoes of advocacy. In so doing, he is functioning much like an attorney in the impoverished community. The confidant, however, is more likely to advise at a preventive or near preventive stage of the indigent's problem, while field discussions with members of the impoverished class would indicate that an attorney, if sought at all, is usually consulted as a matter of last resort when the principal task is to recoup losses. In the washing machine example, the indigent is not likely to consult with an attorney, if at all, until his refusal to make payments has precipitated the seller's repossession of the machine.

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[171] INT. REV. CODE of 1954, § 6012. However, with certain exceptions, for taxable years beginning after December 31, 1969, a return is not required of an individual with a gross income not in excess of $1,700, nor from one who is entitled to make a joint return when the joint income is less than $2,300. *Id.* § 6012(a)(1).

[172] Provided, however, that the *VISTA* volunteer understands the procedure. *See* note 101 *supra.*

The subject matter of problems taken by indigents to local confidants and the scope and direction of advice that is given is quite varied. At the heart of many problems is the lack of or mismanagement of money. Just previous to an interview with a businessman-confidant in one of the larger target communities, an indigent woman had approached the confidant with a problem — she could not live within her means. The woman's husband had apparently run off and left her with five young and hungry children. Her only means of support was her welfare check through AFDC. She was heavily in debt to a local grocer-coal supplier. After a full discussion, the businessman-confidant advised the woman to take her welfare checks, immediately upon receipt, to the grocer-coal supplier, allow him to deduct a portion for her account payable, and then apply the remainder to her credit. The confidant sensed that money burned holes in the woman's pocket and that the best solution for her was to put that money beyond her immediate reach and to good use.

Occasionally, the problem brought to the attention of a confidant has nothing to do with money. A minister-confidant related to the interviewers a recent and rather unusual incident where he successfully resolved a child custody dispute between collateral relatives, an area wherein the final arbiter is normally a court of law. In this case the child's father had deserted the family, the mother was an alcoholic and had left the child with an aunt in order to live with another man, and other relatives wanted custody of the child. The minister was asked to advise on the matter; he arranged a practical solution, and, he said, all parties were apparently satisfied.

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[173] The example is based upon an experience related by one of the indigent residents in a larger target area community. When the intransigent seller refused to honor the warranty, demanded payment, and threatened repossession, the confidant interceded on behalf of the indigent purchaser and persuaded the seller to make the necessary repairs.

The confidants who were interviewed expressed an acute awareness of the limits of their own advisory capacity. When a particular problem was complex and possessed substantial legal overtones, most of the confidants who were interviewed stated that they were loath to proffer any advice other than that the indigent should consult with an attorney. Yet that in itself is beneficial. Confidants are an integral part of an unguided screening process that inures to the benefit of both the formal legal system, by resolving less complicated problems outside of the system, and the impoverished class, by providing an inexpensive, accessible, and generally accurate source of advice for some law-related problems. Most of the attorneys who were interviewed in the San Luis Valley acknowledged that a few individuals well known and respected within the Spanish-American culture — the confidants — were instrumental in referring a number of indigents with legal problems to their offices. And 75 percent of the respondents to the attorney questionnaire believed that the poor generally seek out someone other than an attorney when first confronted with a legal problem.[174]

4. Affirmatively Interceding

Finally, a confidant may do even more than simply explain or advise — he may affirmatively intercede on behalf of the indigent. It is in this respect that the institution of local confidants is most effective in aiding the rural poor through problem resolution. When a confidant, a member of the community's establishment class, sides with an indigent in a dispute or problem involving another member of the establishment, equity is more readily done. Two examples bear discussion.

The Colorado Civil Rights Commission established a regional office in Alamosa in 1966, covering the territory of the San Luis Valley, the San Juan Valley, and the Western Slope regions of Colorado. Although limited in jurisdictional authority to remedy discrimination in employment, in housing, and in public accomodations,[175] the resident director of the office — a Spanish-American — reported that many indigents from all parts of the Valley came to the office seeking advice or help in problems beyond his purely statutory jurisdictional authority. The director stated that he would exert influence whenever possible to help these indigents, often by simply making a phone call and inquiring into an alleged incident. One young man took his badly dented car to a garage for repairs. The car was not repaired for more than two and a half months, even though the youth had paid money in advance. The director of the Alamosa office, when told of the story, simply called the garage and inquired about the incident. The youth received his repaired car within the week. As with the conception of the District Attorney, the indigents who expressed an awareness of the Alamosa Civil Rights office[176] believed its function to be similar to that of an ombudsman for the poor; thus, the director reported that more time and energy were expended by him and his staff on matters not directly involving ethnic discrimination than on matters regarding which the office could file a complaint. A number of more complicated problems brought in by indigents were referred to local attorneys, and the director would sometimes recommend a particular attorney when asked by an indigent. Unquestionably, the director of the Alamosa Civil Rights office is a confidant to the poor, albeit not a typical confidant.

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[174] *See* text, p. 133 *supra*.

[175] *See* note 158 *supra*.

The county judge of one sample county admitted to being something of a credit adjuster in the spate of unpaid grocery bill cases that come to his attention. When an indigent comes to the judge, sometimes prior to but generally after a complaint has been filed by a creditor, and asks for help, the judge — a Spanish-American — consults with the creditor and attempts to settle the problem without formal court action, usually through negotiating a different installment plan by which the consumer can feasibly repay the debt. Inasmuch as a solution other than judgment for the creditor is obviously beneficial to the indigent debtor, the judge's informal intervention marks him as a confidant within a limited sphere.

Other examples of intervention by concerned confidants into the legal problems of the rural poor were uncovered during the field survey: A doctor may telephone the county welfare office and convince them that a particular indigent is in fact eligible for welfare disability assistance; the director of the Alamosa office of the Colorado Migrant Council[177] may go into the fields at harvest time to insure that no underage children are performing agricultural work[178] and that the living quarters for the migrant laborers comply with the regulatory standards;[179] a businessman may help a debtor to renegotiate an outstanding loan; and an employer may advance funds to provide bail for his employee charged with a crime. To be sure, confidants are not universal panaceas for the minor legal problems of the rural poor in the area surveyed. Some confidants are more effective in their assistance than others, depending upon their knowledge, experience, and standing in the community. Yet, in large measure, the willingness of a number of established community residents to assist those of lesser means has diminished both the quantity and severity of legal problems confronted by the impoverished class as a whole.[180]

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[176] Only about one-fourth of the indigents who were interviewed in the same counties were aware of the Alamosa office of the Colorado Civil Rights Commission. The fairly recent opening of the Alamosa office may account for lack of widespread knowledge of its existence.

[177] *See* note 59 *supra*.

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[178] The minimum age is set at 12 years. COLO. REV. STAT. ANN. § 80-6-3 (1963). Both parents and employer who knowingly violate the minimum age requirement are subject to punishment. *Id.* § 80-6-12 (1963). Both parents and employer who knowingly violate the minimum age requirement are subject to punishment. *Id.* § 80-6-12 (1963). From interviews with several farmers, it is apparent that occasional violations do occur, although the farmers rigidly maintain that the parents are the ones who put the children to work. The farmers take advantage of the *scienter* requirement of the statute.

Since the earnings of a migrant family are the result of a total family effort, the parents will take their young children with them to the fields rather than leave them unattended at the labor camps. To alleviate this burden, the Colorado Migrant Council has established infant and child day care centers in the regions of the state which have a considerable influx of migrant workers, including the San Luis Valley.

There are two infant and child care centers in the San Luis Valley presently in operation: one in Fort Garland, in Costilla County, and one in Center, in Saguache County. Each center has a staff of 13. Both local and statewide centers have been extremely successful in achieving their objectives.

[179] *See* notes 213-15 *infra* and accompanying text. Although the director has no power himself to enforce the health and housing regulations for migrant laborers, his presence and concern have an effective influence on the farmers with whom he deals.

[180] An interesting comparison can be made between the confidants as described in this study and the community leaders and service agency personnel interviewed in connection with the Duke study of the legal needs of the rural poor, *supra* note 9, at 562-93. As a general observation, it appeared that the leaders interviewed in that study were consulted somewhat more infrequently than the confidants by indigents with whom they had a prior, formal, advisory relationship — as opposed to a more personal, informal, community relationship. It also appeared that the types of problems brought to their attention were closely related to the advisory capacities which they performed in their occupations or which they performed by virtue of their positions in the community. For instance, welfare case-workers proffered information and advice to their clients primarily concerning other govenment agencies, as well as their own — although the caseworkers, more than other groups, were consulted by clients regarding collateral problems such as domestic relations or consumer problems. Similarly, members of the Agricultural Extension Service were consulted by members of the farming community concerning landlord-tenant farmer disputes, crop damage from neighbor's insecticides, and consumer problems regarding farm equipment. The Farmer's Home Administration agent reported that very few persons who were not FHA benefit recipients sought his advice on anything but loans and "dollar-down" house or repair problems. Finally, landlords and employers were most frequently consulted about money problems by tenant farmers or employees requesting loans and, occasionally, assistance in minor criminal matters. In short, the advice giving function reported in the Duke study was primarily related to a prior, formally structured role relationship or the "leader's" occupational advisory function.

In contrast, the nature of the confidant's function appeared to be much broader, notwithstanding several significant similarities. They were often consulted by persons whom they knew or who knew them as members of the community. Although many

B. *Self-help and Interpersonal Dealing*

Many of the law-related problems which are resolved by indigents are resolved through their own initiative and resourcefulness. The technique is one of self-help and involves a direct and frontal assault on the particular problem without reference to auxiliary aid — attorneys or confidants included. The indigent deals directly with his adversary or the source of his law-related problem using whatever means he can command. In order to fully understand this ad hoc approach to problem resolution, it is beneficial to understand the culture of the impoverished class in the southern portion of the San Luis Valley.

The oldest town in Colorado is San Luis, in Costilla County, having been settled by the Spaniards in 1651.[181] Thus, the Spanish-American culture in this region has a long history. Add the high degree of interrelatedness among Spanish-American families in the area[182] and the distinguishing ability of most as bilingual,[183] and the result is a basically proud people, though that pride has been deeply shaken by the pathos arising from economic stagnation. In the male members of the Spanish-American culture, that pride finds expression in *machismo* — or manliness.[184] The fist is a symbol of that concept, and the defense of one's character by means of a street fight is as much an integral part of existence within the Spanish-American poverty class[185] as are the close ties that bind large families together. Thus, when Spanish-American indigent deals with Spanish-American indigent and a law-related problem is involved, resolution is not accomplished by resort to abstract rules; rather, the more domineering and stronger of the two personalities is likely to dictate

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of the contacts undoubtedly stemmed in part from some prior business or other relationship with the confidant, this did not appear to be the primary basis of the contact, nor did it limit the scope of the contact. Rather, the confidant's reputation in the community for his willingness to help — generally out of a sense of *noblesse oblige* or a feeling of cultural identity with his fellow Spanish-American — was the primary basis for the contact. Also significant was his reputation for having knowledge or experience in a certain area — which may or may not have been identical with his occupational function.

In short, the confidant relationship appeared to be a relationship institutionalized on the basis of the confidant's general standing or status within the agricultural community. On the other hand, the government functionaries described in the Duke study generally performed a more specialized assistance function, based primarily on their occupational status within the larger societal context — essentially, the federal scheme of government largesse.

[181] H. Skogland, *supra* note 34.

[182] *See* note 27 *supra* and accompanying text.

[183] *See* note 28 *supra* and accompanying text.

[184] *See* note 22 *supra*.

[185] It was observed by the researchers for this project that Spanish-Americans who by education, intelligence, and a keen entrepreneurial nature, had become reasonably successful members of the establishment class were likely to be "Anglicized"; that is, they, like the Negro "Uncle Tom," had, to varying degrees, abandoned some of the distinct cultural traits of the lower class of Spanish-Americans. Thus, resort to fisticuffs is almost anathema to the successful Spanish-American businessman; the same cannot be said for the seasonal farm laborer.

the solution, by physical force if necessary. A few examples will illustrate this self-help process.

The indigent residents of each target area community surveyed almost unanimously agreed that ineffective law enforcement was the number one problem of a legal nature in their respective communities. Juvenile delinquency was said to be rampant. Youth gangs had free rein of the towns after sunset, it was said. Since only one of the four target communities was incorporated at the time of the field survey,[186] only one community maintained any local police force, and that town had but one city policeman. The obligation to keep the peace and preserve law and order thus falls upon each county sheriff and his single assistant or upon the Colorado Highway Patrol. The Patrol maintains a regional office in the town of Alamosa, but the patrolmen are only minimally effective in keeping the peace since they have a wide geographical area to cover and simply cannot be in all places at all times. The same can be said for the sheriff's department of each county; in addition, the sheriffs in both counties are considered to be incompetent by many of the residents.[187] Also, many indigents surveyed in one county complained that the county judge was far too lenient in meting out punishment to law violators.[188]

In summary, then, many of the citizens of the two sample counties stated that, for various reasons and causes, a serious crime problem — particularly juvenile delinquency — exists in the region, much of which goes unpunished and unreported because of ineffective law enforcement From the many criminal incidents related by various indigents and other residents surveyed, it is apparent that a substantial basis in fact exists for these claims.[189] Faced with this problem, some residents resort to the self-help technique. As one member of the Outreach Advisory Council to the county's Committee Action Program remarked, "You have to take the law in your own hands around here." Given the *machismo* character, it is not surprising that a victim of a beating, the brother of a girl raped, or the owner of a badly vandalized car prefers a personalized vengeance, an eye for an eye, rather than the more impersonal and dilatory formal system of justice. Many of the minor crimes, both against the person and against property, are resolved in this manner. Certainly, in some cases the solution is as reprehensible in a pristine legal sense as is the crime. Nevertheless, it is a resolution of a problem within the Spanish-American cultural ethic.

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[186] Within the year following the field research, another of the target communities incorporated by referendum of the community residents.

[187] At least in Costilla County, the complaints voiced by many of the indigents surveyed against the local sheriff, were well-founded. The sheriff resigned on July 10, 1969, in the face of a 9-count information filed against him in the state district court in Alamosa, charging him with malfeasance and perjury. The Denver Post, July 11, 1969, at 4, col. 3. One of those counts accused the sheriff of neglecting his duty to keep and preserve the peace and quiet and to "suppress all affrays" on certain dates in his county. The Rocky Mountain News, July 12, 1969, at 44c, col. 4.

[188] For further discussion of the operation of the judicial process in the region surveyed see text, § V(B)(3) *infra.* Judicial leniency was said by a number of residents surveyed to be particularly acute when members of juvenile gangs are the charged parties. In one incident, a local merchant in a county seat was severely beaten by a gang of youths. When the instigator of the beating was brought into county court, presumably on charges of assault, he was fined $18 plus court costs. Another citizen of the same community reported serving on a jury in a felony case where the defendant was found guilty and fined a mere $10. The county judge of that county, a charter member of the community elite, was rarely spoken of in positive terms by the poor residents of the community. Whether the alleged leniency of the judge was the sole reason for the opprobrium cast upon him or not, the voters of that county decided in the November 1968 election against retention of the county judge after his term of office expired in January of 1969. La Jara Gazette, Nov. 29, 1968, at 1, col. 6. This negative method by which the public weal is brought to bear upon an incompetent state or county judge, as opposed to direct election of judges, was made possible by a 1966 amendment to the Colorado Constitution which removed all judicial officers of the state from partisan politics. COLO. CONST. art. VI, § 25, *as amended* (Supp. 1967).

Undoubtedly the greatest demonstration of the self-help technique against crime on a community-wide basis occurred on Halloween eve, 1968. Fearing a particularly heavy toll in vandalized property, approximately 30 residents of one target community donned warm clothing and patrolled the town streets in small groups until the early morning hours. In consequence, a bare minimum of vandalizing occurred.

Another example of the self-help process occurs when an indigent widow, widower, or divorcee dies intestate, leaving a few meager assets possibly including a house and a small plot of land. In a substantial majority of cases, the distribution of the property is not made through a probate court according to Colorado's statute of descent and distribution.[190] Instead, the assets are divided among family members on a purely ad hoc basis, important factors usually including age and intelligence. That is, the oldest or smartest child is likely to get everything, or at least that which he wants. There is no rule of thumb to guide the distributor, as there would be under the statute. The process is ad hoc and, given the minimal assets involved, is believed by most indigents surveyed to be the easiest and probably the best method of distribution. The ad hoc, self-help process, it is contended, takes cognizance of differentials among children in their needs and desires for available assets.

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[189] Among the many incidents of criminal and delinquent conduct related by residents of the sample counties to the student interviewers are the following from one particular target community:

A group of juveniles wreaked havoc one evening in the town's only theater. They set off firecrackers inside the building, threw bottles into the audience, and slashed the screen with knives. The theater manager called the sheriff's office. The sheriff came to the theater and "lectured" the boys outside of the building, warning them not to go inside and do any more damage. As soon as the sheriff had left, having taken no further action, the juveniles went back inside and continued their spree. Drag racing down the single main street of the community is a common occurrence, even when the sheriff is in town. The local residents complained of broken windows in their homes and cars, slashed tires, and even gang beatings. The local Catholic priest stated that the poor box in the church had been robbed so many times that it was removed. A *VISTA* volunteer reported that one particularly notorious gang of youths had severely vandalized seven cars in one evening, including the *VISTA* volunteer's Volkswagen. One auto was towed out into the surrounding prairie and set afire.

Some blame for any high rate of crime and vandalism in the two-county region must be laid at the doorsteps of the very residents who complain. Few of the local citizens report crimes, vandalism, or acts of violence, and even fewer notify the district attorney or file complaints. One county judge cited this fact in support of his statement that "there is nothing serious going on around here" in the nature of crime. There are several hypotheses for explaining this apparent lack of formal citizen action in fighting crime. One, of course, is that utilization of self-help in dealing with those perpetrating acts of crime or vandalism, heretofore discussed, precludes any necessity for reliance upon the formal agencies of law enforcement and justice. However, recourse to formal agencies and even use of self-help is inhibited on occasion by fear — fear of recrimination. This is particularly true of a few notorious and vicious youth gangs. The leader of one such gang, reputed to have had arrest warrants issued from 4 different counties in the San Luis Valley hanging over his head at one time, had continuously averted conviction when brought to trial because the victims of his terrorism were loath to testify against him and other members of his gang, or because the parents of the defendants had sworn to and supported their questionable alibi defenses.

Still another example can be found in the landlord-tenant area. Most of the housing units in the rural poverty pockets in the San Luis Valley are owner-occupied.[191] Landlord-tenant relationships, where they exist, are often between members of the same ethnic group — Spanish-Americans. The prevalent condition is that a Spanish-American member of the establishment owns a housing unit and rents it to a member of the poverty community for a small monthly charge. Exorbitant rental charges are uncommon. In fact, the low rental charges are often used as an excuse by the landlord for his failure to repair deterioration in the rented premises. Many tenants accept this as the quid pro quo for low rent. In the urban slum, rent paid for a typical slum dwelling is not greatly dissimilar to that paid for more desirable housing.[192] In the rural poverty pockets surveyed, monthly rent for what would be an uninhabitable dwelling in an urban ghetto is much less than rent for more desirable housing. One woman in a target community reported that she paid rent of $25 per month on a house which badly needed new roofing. She reported that the upkeep cost is not figured into the rental cost, and that she was aware of this prior to entering upon the premises. Although disturbed with the substandard condition of her dwelling, she felt she had received what she had bargained for.

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[190] COLO. REV. STAT. ANN. § 153-2-1 (1963). This section provides, *inter alia,* that all assets of an intestate survived by children but not by a spouse are to be equally divided among the children. Under the self-help, nonjudicial method of intestate distributions so common within the impoverished class, equality of distribution among descendants is rarely accomplished.

It should be noted here that almost all indigents in the area surveyed die intestate. An independent examination of the probate records for the district court in one county revealed that no wills were probated from 1966-68 wherein the testator was Spanish-surnamed. Rather, the assets of all but two of the Spanish-surnamed estates were distributed under Colorado's small estates provision. That stautory provision provides for distribution, upon verified petition, of estates left by intestates not exceeding the value of $5,000 without the necessity for a court-appointed administrator and with much quicker completion. COLO. REV. STAT. ANN. § 153-7-4, *as amended* (Supp. 1967). On the other hand, the majority of estates where the deceased was not Spanish-surnamed involved wills and were fully probated.

[191] *See* note 75 *supra* and accompanying text.

[192] G. WALD, LAW AND POVERTY: 1965, at 13 (1965).

The indigent tenants in the region surveyed uniformly stated that they would take a grievance involving the premises or the landlord-tenant relationship directly to their landlords. If nothing developed, they might withhold all or a portion of their rent in order to compel the landlord's recognition and solution of the particular problem. Indeed, a few tenants stated that they had used this very technique with success, and several more stated that they had instead moved from the rented premises in the face of an intractable landlord. In any event, resolution of the particular problem — usually, a failure by the landlord to maintain the premises in habitable condition — was accomplished without resort to an attorney or the accoutrements of legal process.[193]

Another type of self-help may be the indigent's "common law" divorce. Faced with an unsatisfactory marriage relationship and an inability to raise a minimum $100 retainer to hire an attorney for a legal divorce, an indigent husband may simply leave his wife and take up residence elsewhere, perhaps in the same region and even with another woman. Since common law marriages are recognized in Colorado[194] and since such marriages are apparently fairly common in the region surveyed, putative spouses often assume that mere separation of a common law marriage is tantamount to a legal divorce.[195] Thus, two poor residents may begin a marriage relationship by consent, beget children, and then simply pack up and go their separate ways. It is, of course, possible that knotty legal problems may later arise, including bigamy, child custody, distribution of assets from a deceased spouse, and so forth. Yet, a self-help de facto termination of a marriage relationship may just as possibly give rise to no manifest legal problems later on, and, in that event, it cannot be gainsaid that the "solution" of the problem was effective.

One final example of use of self-help is significant, for it can be a prototype for future actions by impoverished rural citizens. It is self-help *en masse*. A group of Spanish-American poverty class members residing in the community of Center in Saguache County, located about 12 miles north of Monte Vista, recently organized a consumer cooperative. The cooperative purchases food in large quantities from wholesale dealers outside of the San Luis Valley, taking orders and payment in advance from its members. The participating members of the cooperative were quite pleased with its success in obtaining less expensive food. In the fall of 1968, the cooperative sought to increase its membership with a campaign to sell the idea of less expensive food prices through group action to local leaders of the Lariat *barrio* at Monte Vista. Although no similar cooperatives were found among indigent residents of either Conejos or Costilla County, the success of the Center cooperative venture may very well motivate its use in the latter two counties.[196]

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[193] The self-help methods are notably inadequate in landlord-tenant matters where the tenants are migrant farm laborers. The housing units provided them by the hiring farmers are often most unsatisfactory. *See* notes 213-15 *infra* and accompanying text. Yet, the migrants simply have no bargaining power with which to improve their lot. Their nomadic life severely limits their housing option, and their pitifully low wages takes them out of much of the rental market. Thus, all of the bargaining power is on the side of the farmer; hence, he need not maintain the migrants' housing units in proper state of repair.

[194] Graham v. Graham, 130 Colo. 225, 274 P.2d 605 (1954).

[195] Divorce, however, is accomplished by a judicial act, established by legislative grant. The public policy is to promote marriage as the foundation of society. *See* Gilpin v. Gilpin, 12 Colo. 504, 21 P. 612 (1889). *See also* James v. James, 97 Colo. 413, 50 P.2d 63 (1935) (in which decree of annulment was upheld upon proof that marriage took place while wife was undivorced from a man with whom she had contracted a common law marriage).

Any objective evaluation of the self-help and interpersonal method of resolving law-related problems must begin with the premise that solutions effected by these processes, outside of the legal arena, may not be equitable or valid within the legal definition, nor for that matter may they even be denominated within the legal lexicon as a "solution." But the researchers for this study concluded on the basis of the many interviews with both indigents and community leaders that a price of penury which the rural poor are willing to pay is the absence of a formal and proper legal solution to most legal problems. Rural indigents surveyed often define a "solution" of a legal problem in lesser terms than those the formal law may impose. Therefore, throughout this study, "solution" has been defined very liberally to include any significant improvement in the position of an indigent vis-a-vis his legal problem, but falling short perhaps of a clean, neat, equitable, and final solution, whether or not legally obtained. So viewed, the self-help process, when it involves an indigent *qua* indigent, is often effective albeit often inequitable. Although he may have been legally liable, for example, an indigent may resolve an auto accident problem in his favor, simply because his size, strength, or tough veneer causes the other driver to cower and accede to the first's proposed solution. In a few instances, it is arguable that the self-help solution may be preferable to a legal solution. Perhaps the law of descent and distribution would effect a far different distribution of family assets of a deceased than that which normally occurs, yet the actual ad hoc solution may be the best way to prevent interfamilia bickering and argument. Perhaps a tenant could legally force his landlord to repair the rented premises, yet a disproportionately low rental rate may be the best solution for all concerned. In one significant area, law-related problems are *not* easily susceptible to the self-help processes of indigents. When the indigent's adversary is a member of the establishment class or a functionary of a governmental agency, there is a greatly increased probability of actual failure to resolve the problem by any definitional standards which would assess actual benefit to the indigent. Welfare refusals, credit demands, failure of employers to pay correct or minimum wages, and the entire procedural gamut of the criminal justice system are but a few typical examples of law-related problems where the indigent is simply without effective bargaining or persuasive power.

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[196] For an excellent article on consumer cooperatives see Miller, *Organizing the Consumer Cooperative*, in THE LAW AND THE LOW INCOME CONSUMER, N.Y. UNIV. SCHOOL OF LAW, PROJECT OF SOCIAL WELFARE LAW 392 (Supp. No. 2, C. Katz ed. 1968).

C. *Inaction*

On occasion, inaction on the part of the indigent may well be an effective resolution of the problem. An illustrative instance is the absence of wills among many of the impoverished class surveyed.[197] Whether by choice or by chance, the failure of an indigent to specifically provide for disposition of his property effectively works a solution either by reason of Colorado's statute of descent and distribution or by the self-help process described above.

By choice or by chance, an indigent debtor will sometimes find that he will not need to pay a bill he owes or is alleged to owe simply because he has never taken the affirmative action to pay the bill. One of the leading citizens and political leaders in a target community reported that he then had outstanding $17,000 in unpaid bills from his all-purpose hardware and appliances store. He stated that he hoped to collect $7,000 at the most. One woman had owed him $38 for six or seven years. He had never brought legal action to effect collection, and he now felt that there was little hope that he would ever obtain the money. A number of the debts may now be legally unobtainable by virtue of Colorado's 6-year statute of limitations for an action on a debt.[198] Thus, some debtors have resolved the problem of their debt, albeit inequitably and unjustly.

V. CLASS INJURY: THE SYSTEMS FAIL

An analysis of the types of problems which are susceptible to effective resolution by informal means reveals that these are more than likely to involve conflicts arising among and between members of the poverty class. For instance, self-help and interpersonal methods of dealing with indigent legal problems seemed to be most effective in resolving such matters as juvenile delinquency and the less serious crimes committed by and against the indigent class, many domestic relations problems, problems of intestate succession, and, to some extent, landlord-tenant problems. Similarly, the drafting of a simple deed or contract by a confidant did not generally involve the interests of a member of the establishment: Where establishment members were involved, as in the case of installment contracts, they were likely to provide the legal forms of expertise themselves.

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[197] *See* note 190 *supra*.

[198] COLO. REV. STAT. ANN. § 87-1-11(2) (1963).

While the informal problemsolving methods are often successful when the law-related problem is between two members of the poverty class, they are less likely to effect a satisfactory solution, if at all, when the problem is between members of different classes — and even then only within a limited sphere. For instance, confidants can occasionally be of some aid when an indigent confronts the establishment by offering active assistance or by giving appropriate advice at a preventive stage. However, the effectiveness of any active efforts by a confidant will depend upon several variables. If the particular problem is still germinal, or in any event has not reached a critical or emergency stage, then the intercession by the confidant is more likely to bear fruit. And, when the indigent's adversary is a member of the local community establishment, the chances for resolution are obviously greater than when the adversary is not a local citizen or agency. Finally, and perhaps most significantly, the degree to which the member of the establishment has a vested self-interest in the matter will substantially affect his willingness to resolve the problem through negotiation and compromise, rather than through the rigid avenues of legal process.

In the absence of these factors, when a member of the poverty class is confronted with a legal problem and the establishment (individually or collectively) or the impersonal forces of government and law are arrayed against him, he is rarely able to deal with his adversary on anything approaching an equal basis. Consequently, the result is almost foreordained – the legal rights of the indigent are not fully vindicated. In many instances the legal problem is not successfully resolved for the indigent, even when that term is given a liberal meaning. This type of legal problem is denominated herein as class injury and is the most serious kind of legal problem facing the rural poor in Conejos and Costilla counties. With some forms of this class injury, the indigent would benefit greatly from the advice and assistance of an attorney; with other forms the pressing need is an alteration of the law itself. The remainder of this section will outline and document some of the difficult class injury legal problems related to the researchers by indigents interviewed in the sample counties.

A. *Conflict With the Establishment*

When the adversary of the indigent is the establishment — either individually or collectively — some of the difficult class injury problems related to the researchers were ethnic discrimination, consumer injury, and landlord-tenant relationships.

1. Ethnic Discrimination

To the extent that the poverty class is composed primarily of Spanish-Americans, ethnic discrimination by a member of the establishment against a Spanish-American indigent can be denominated as class injury within the operational definition of that term as set forth in this study and, by its very nature, cannot be remedied through informal means. Heritage and cultural identity cannot be altered or compromised.

While the pervasiveness of this kind of class injury could not be precisely ascertained, there was evidence that ethnic discrimination did create a significant legal problem for the rural poor. For example, the director of the Colorado Civil Rights Commission's regional office in Alamosa stated that his office receives a substantial number of citizen complaints of ethnic discrimination.[199] Upon investigation, some of these are determined to be unfounded; others are determined to be well-placed and result in the filing of a formal complaint. To illustrate, employment discrimination charges were pending against the local offices of the Rural Electric Association and the Colorado Public Service Company at the time of the interview with the director. Charges were also pending with regard to discrimination in the hiring of Spanish-American teachers in one school district in Rio Grande County.

It also appears that migrant farm laborers are even more subject to subtle and not-so-subtle discrimination than are the more permanent indigent residents. Both the director of the Civil Rights office and the local director of the Alamosa office of the Colorado Migrant Council indicated that it was not uncommon for city police from incorporated towns in the San Luis Valley to harrass migrant workers with numerous parking violations for those with cars and charges of vagrancy for those without.[200] Sources of information in one target community reported that prices for many grocery items were raised slightly when the influx of the migrant workers into the area was at its peak during the potato harvesting season in early September. The stated view of the permanent residents who employ or condone such discrimination is that the migrants are just plain "bad" for the area. Reflecting a distinctly parochial attitude, particularly when outsiders are impoverished nomads, the permanent community residents (with the exception of the employing farmers) would prefer that the migrants never again enter the Valley.

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[199] For a brief outline of the jurisdictional authority of the Colorado Civil Rights Commission, see note 150 *supra.*

[200] However, it is interesting to note that, unlike conditions extant in many urban ghettos, bitter animosity between the permanent indigent residents and law enforcement personnel does not exist in the area studied. At least one reason is obvious: The number of city policemen (where a community is incorporated), sheriff's office personnel, and highway patrolmen is relatively small and the geographical area which must be covered is relatively large. Hence, there is not a continuous opportunity for real or imagined instances of police discrimination to boil up into a groundswell of Spanish-American rancor. Furthermore, the few city policemen and sheriff's deputies in the two sample counties are virtually all Spanish-American. The citizen complaints of law enforcement which were related to the interviewers centered more on charges of incompetency and ineffectiveness of the police rather than on charges of ethnic discrimination.

2. Consumer Injury

As consumers, the rural poor are often brought into relationships with members of the establishment, such as a creditor or a large sales firm, and these relationships often result in problems. It was concluded from the field interviews of indigents in the target communities that a substantial number of the poor have suffered some sort of consumer problem. The legal ramifications of these problems vary in pervasiveness, in seriousness, and in causation.

For example, a problem minor in seriousness but frequent in occurrence was unsatisfactory merchandise. Of the 100 or so indigents surveyed, about one-third related instances of consumer purchases which were unsatisfactory in some respect. The principal complaint was that the goods were in poor condition and not totally functional.

More serious in nature and, perhaps, wider in scope were problems of high prices and credit which were created both by the geographical and social context of the rural communities and by nonlocal members of the establishment. To illustrate, prices on many commodities, particularly food, tended to be higher in the two sample counties than in the towns of Alamosa or Monte Vista. At least one of the factors contributing to higher prices — the necessity for extending credit — is inherent in the nature of local conditions. Since the agricultural economy is seasonal and so many of the indigents are engaged in agricultural or related occupations, it is quite difficult for cash-only stores to exist in most places, according to the testimony of interviewed business leaders. Thus, almost all retail concerns deal in credit in the off-season; the large, cash-only retail chain food stores, such as Safeway, Inc. (a nonlocal member of the establishment), which could maintain lower prices have not established outlets except in Monte Vista and Alamosa.

Given the higher prices in these rural areas, the necessity for extending large amounts of credit, and the not infrequent inability of the poor to pay their debts, creditor-debtor problems often arise between the poor and the establishment. For example, the study found that there were several instances of overcharging on the total price for a commodity bought on credit.

When the seller is a local businessman, indigent respondents were sometimes successful in rectifying consumer problems through informal processes. The principal method was self-help — taking the matter directly to the seller. Some indigents threatened or actually refused to continue payments on defective credit purchases; the desired result — generally repair by the seller — was effected in a majority of cases. Confidants were also utilized. One woman who had previously been advised by a confidant to hand over her monthly welfare paycheck from AFDC to her local grocer-coal supplier to apply to her grocery credit[201] discovered some months later that the grocer had tabulated a bill in excess of $1,000. Bewildered by this staggering figure, the woman again consulted the confidant, who apparently was able to sizeably reduce the indebtedness. Only three indigent respondents reported that they consulted an attorney when confronted by a consumer problem. In two of the instances, a sizeable credit purchase had been made, exceeding $300 in each case, and the indigent was being dunned by the seller after full and reasonable payment, according to the indigent, had been made. The third case involved a contract dispute with a very small construction company which had failed to adequately install a new bathroom in one indigent's house. In all three instances, resort to legal advice proved advantageous to the indigent.

The businessmen, in turn, resort to informal methods to collect unpaid bills. Either by letter or personal confrontation, the businessman lets his debtor know he is expected to pay his just debts. Businessmen surveyed indicated this was a reasonably effective collection technique. With more intransigent debtors, some businessmen have resorted to pseudo-legal collection techniques. The debtor is dunned by formal letters, threats, or referral of the matter to collection agencies, all of which connote use of "legal" process to the indigent but which are really short of that. Finally, the creditor may retain an attorney and bring suit on the debt. Apparently, this is infrequently done, and the records of the county courts in both counties, where small claims would normally be brought, are surprisingly void of collection suit cases which have gone to judgment, default or otherwise. The size of the individual debts are apparently too small to deserve full use of the panoply of legal process, and, like the hardware owner who reported $17,000 unpaid bills outstanding,[202] most merchants stop short of bringing debtors into court. At most, the collection suit is used as an informal weapon in the creditor's arsenal of coercive means to deal personally with debtors. The simple recognition is that if the indigent debtor cannot find sufficient liquid funds to pay the debt, a default judgment is not going to alter that fact, but will only allow the cumbersome and time-consuming process of execution to run its course.

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[201] *See* p. 141 *supra.*

[202] *See* p. 151 *supra.*

Perhaps a much more difficult consumer problem is pervasive and concerted consumer fraud. The purveyors are invariably nonlocal, transient vendors,[203] since communities are too small and interpersonal relationships too tightly drawn for blatant fraud to be performed by local merchants. In each of the target communities surveyed, indigent respondents related tales from their own or their neighbors' experiences concerning a Denver firm dealing in house siding whose traveling salesmen fleeced local homeowners. Although the interviewers requested in each instance the name of the firm and a copy of the typical contract, such documents could not be obtained. But, the *modus operandi* of the firm appeared to be as follows: The salesman confronts the homeowner and informs him that his home has been selected as a model showcase for new house siding. The siding will be sold at minimal cost, and the owner will reap a benefit in small commissions when other homeowners view his house and, as a result, subsequently purchase siding for their own houses. Naturally, the homeowner does not have the ready cash to pay the "minimal" cost, so he signs a lengthy contract (which he does not read) and the salesman graciously "lends" the money to the homeowner, taking a note in return. The note is then sold to an urban bank or finance company at a discount. In some actual and reported instances, the siding is never placed on the house. Even when it is properly attached, the buyer discovers that he has had to pay more for it than he had bargained for. Further, the buyer never receives the purported commissions. Yet if he defaults on the note — whether in protest for faulty construction, for no construction, or for lack of necessary funds — the urban bank or finance company can sue as a holder in due course and generally recover.[204]

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[203] Some divergence of opinion concerning the extent of transient vending done in the sample counties was apparent. Local businessmen tended to pooh-pooh contentions of extensive consumer fraud by traveling salesmen. Their logical view was that the economy of the region was depressed, the people were poor, and a salesman simply could not find enough buyers to justify peddling his wares. From discussions with many indigents, however, it was apparent that the practice is common. Thus, the unsubstantiated but logically inferred conclusion is that the fly-by-night salesmen prey only on the poor.

[204] The *Uniform Commercial Code* protects a financial institution that buys negotiable consumer paper as a holder in due course against all defenses of any party to the instrument with whom the holder has not dealt except "[s]uch misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms." COLO. REV. STAT. ANN. § 155-3-305(2)(c) (Supp. 1965).

> Realizing that it is almost impossible for a defrauded consumer to prove that a financial institution had actual notice of his transaction with the dealer, courts have recently been withdrawing the holder in due course protection from

Although not reported as often as the siding company incidents, similar complaints were voiced against transient sellers of fire extinguishers, baby albums, roofing repairs, magazines, sewing machines, and encyclopedias. The indigent consumer, lacking the necessary legal understanding of simple contract law, is in a disadvantageous position with respect to the seller. Contracts of adhesion are common; the indigent signs a printed form prepared by the seller, which is often unduly lengthy with an excessive amount of fine print, rather than bargaining with the salesman about the terms of the contract.[205] Additionally, when the buyer speaks only Spanish, the contract written in English is obviously unintelligible, allowing the salesman to misrepresent the terms thereof.[206] In one instance, the notorious siding company salesman obtained the signature of a woman on a contract which was not explained to her; she didn't read it because of very bad eyesight, and she subsequently went to an attorney when the company demanded $900. She had signed the contract with the understanding, orally expressed to the salesman, that it would not be binding until her husband had also signed. The attorney informed her that nothing could be done because the particular contract was good and binding.

When the indigent consumer protests to the home office of the dealer about an obviously illegal demand, as did one woman who signed a subscription to a magazine for $4 and was later billed for $50, he might be able to obtain a favorable result. It is unfortunate,

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> financial institutions which "should have known" the underlying transaction was fraudulent. . . .
>
> Courts are also restricting holder in due course protection in areas where banks and finance companies are adopting a 'see no evil' stance. Often in these cases discount rates are marked down significantly, and a dealer might receive only fifty percent for his paper. . . .
>
> . . . .
>
> While cases narrowing the scope of the holder in due course protection do provide some aid to the innocent consumer, these decisions leave unaltered the practices creating the need for defenses against the financial institution, conditions which will be corrected only by consumer protection legislation.

Note, *Translating Sympathy for Deceived Consumers Into Effective Programs for Protection,* 114 U. PA. L. REV. 395, 415-16 (1966) (footnotes omitted). For an accurate summary of the type of practice done by the siding company, the following is classic:

> Failure of consideration is a basic defense which is generally pleaded where the article is never delivered; but the consumer paper is nonetheless sold to the financing agency. It is not as often present since usually the dealer makes some attempt to perform. He generally desires to bilk a number of customers in a short period of time, sell the consumer paper, and disappear from the jurisdiction to greener fields before the sheer weight of complaints cuts short his activities.

Littlefield, *Good Faith Purchase of Consumer Paper: The Failure of the Subjective Test,* 39 S. CAL. L. REV. 48, 63 (1966).

[205] *See, e.g.,* Meyer, *Contracts of Adhesion and the Doctrine of Fundamental Breach,* 50 VA. L. REV. 1178 (1964); Lorenz, *supra* note 145, at 429. *See also* Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965).

[206] *See* Frostifresh Corp. v. Reynoso, 274 N.Y.S.2d 757 (Dist. Ct. 1966).

though, that too few indigent consumers take any form of positive action. The most common response to a fraudulent purpose from a traveling salesman was a complaint by the indigent to his neighbors and friends, but little else.[207]

The rural indigent consumer needs, more than anything else, the equipment to deal with the larger business community on relatively equal terms.[208] What is needed is a practical knowledge and understanding of the business world and the techniques by which it operates. It is, for example, the knowledge that a particular money lending company in one of the target communities, regardless of its open door policy, friendly atmosphere, and enticing advertisement,[209] regularly charges the highest possible interest rates allowable by state law when making loans to indigents.[210] The poverty class itself, by limited educational achievement and business experience, does not generally possess this knowledge. The void, then, must be filled, if at all, by an ally. Confidants are helpful. Better Business Bureaus, traditional watchdogs for unsuspecting and unknowing consumers, are nonexistent in the two sample counties. The Chambers of Commerce in the two counties have swept the problems under a rug.[211] Offices of the Community Action Program in each county have been helpful; a citizen's advisory council to one county's CAP office has an uncohesive and faltering program to fill the knowledge void. In short, minimal efforts are being made to arm the indigent class with the weaponry of knowledge and understanding of business practices — and, surely, some effort is better than none — but until and unless these efforts are vastly expanded, consumer problems, particularly with nonlocal businessmen, will remain a very real source of class injury.

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> Terms which on their face are illegal are nonetheless included in sales contracts and are complied with by buyers who are unaware of the illegality of the provisions. Here, a suit for recission may be insufficient to deter the seller from continuing the practice. An action for punitive damages or criminal proceedings may be in order.

Lorenz, *supra* note 145, at 430.

[208] The law has now provided a remedy in theory for the indigent consumer who has suffered injury by a fraudulent sale disguised in legal trappings: the provision of the *Uniform Commercial Code* granting power to a court to refuse to enforce an unconscionable contract. *See* COLO. REV. STAT. ANN. § 155-2-302 (Supp. 1965). In practice, however, that provision is worthless unless (a) the drawer of the contract has been unable to obtain his payment or consideration under the unconscionable contract terms by all other means, (b) the drawer brings suit against the indigent on the contract, (c) the indigent still does not pay under pressure of the pending suit, (d) the indigent consults with an attorney, (e) the attorney decides to accept the case and defend the indigent, (f) the attorney interposes § 2-302 of the Uniform Commercial Code as a defense, and (g) the court finds the contract to be unconscionable. As a practical matter, this set of conditions will be rare indeed in the rural area under study.

[209] One form of advertisement must have been uniquely tantalizing to an indigent consumer in need of immediate cash. The company sent out form letters in November of 1968, some of which were received by indigents interviewed, which advertised its new offices and enclosed a draft for $302.29 "which can be *immediately* converted to *cash* simply by bringing it into our office." The monthly payment was stipulated as only $19.00, but the total number of months required for repayment and the interest charges were not specified. "Your *signature* is all we require to credit worthy people on a loan of this size." The letter urged the recipient to "bring the enclosed Draft to our office *today*. Better yet, *phone first* — [phone number given] — and the money will be ready for you to pick up when you stop by the office."

[210] Under the Colorado Consumer Finance Act, COLO. REV. STAT. ANN. §§ 73-3-1 *et seq.* (1963), which regulates lenders making loans of less than $1500 at interest rates equal to or exceeding 12 percent per year, the rate ceiling of interest for loans up to $300 is 3 percent per month, for loans between $300 and $500 is 1 and ½ percent per month, and for loans between $500 and $1,000 is 1 percent per month. *Id.* § 73-3-14(1) (a) (1963). The Act allows disclosure of interest as a percentage per month, *Id.*, but Title I of the Consumer Credit Protection Act, Truth in Lending, requires disclosure of the finance charge as an annual percentage rate for all consumer loans. Consumer Credit Protection Act, § 127, 82 Stat. 146 (1968).

3. Landlord-Tenant Relationships

Surprisingly, the class injury legal problems which arise in landlord-tenant relationships between the poor and the establishment are perhaps the least significant of the problems examined by the study in terms of frequency of injury. While such difficulties do occasionally arise, *e.g.*, when a landlord fails to repair rented premises, they are not pervasive because many of the impoverished residents of the sample counties own the homes in which they reside.[212] The home may be small, old, and worth very little, but it is nonetheless owned. Further, those rural indigents who do rent their housing units often have a relative as their landlord. Due to such circumstances, the study found little evidence of a counterpart to the urban slumlord within the counties surveyed.

More serious landlord-tenant problems exist, however, among migrant laborers who must rent their living quarters. The migrant housing is often owned by one or several farmers who hire the laborers to harvest crops. Often the housing is decrepid and unsanitary. The Colorado statutes authorize the Department of Health to establish and enforce sanitary standards for such labor camps,[213] yet the regulations which have been promulgated pursuant to this statute[214] are not being enforced because the legislature has not provided for effective sanctions for violators.[215]

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[211] In the Arkansas Valley on the eastern plains of Colorado, local Chambers of Commerce have extended some efforts to inform the poor of the predatory practices of transient vendors. The techniques have been public meetings and the dissemination of printed information among indigents.

[212] *See* note 75 *supra*. *See also* notes 191 & 192 *supra* and accompanying text.

[213] COLO. REV. STAT. ANN. § 66-1-7(14) (1963).

[214] Sanitary Standards and Regulations for Labor Camps, Colorado Department of Health Regulations (June 18, 1968).

[215] Chase, *supra* note 58, at 73.

B. *Conflict with Governmental Institutions*

When a member of the poverty class is confronted with a legal problem and the impersonal forces of government and law are arrayed against him, he is rarely able to deal with his adversary on an equal basis, and class injury is likely to occur. Some of the difficult problems in this area were found to include laws which created distinct inequities for the rural poor; denial, reduction, or termination of welfare or other benefits; and the procedures used in administering a system of criminal justice.

1. Inequitable Laws

To a significant extent, federal and state laws have effectively segregated much of the rural impoverished class, especially migrant laborers,[216] from positive benefits conferred by the law on others. For example, the agricultural worker is excluded from both the National Labor Relations Act[217] and the Colorado Labor Peace Act.[218] He is thereby unable to form a union with his fellow agricultural workers in order to obtain better wages, hours, and working conditions through effective collective bargaining. Further, the agricultural worker is excluded from coverage under laws regulating both unemployment insurance[219] and workmen's compensation.[220] These exclusions invoke significant hardship on the rural poor since farm mechanization is increasing in the rural areas under study; for not only do machines displace agricultural workers, leaving them without a source of income until they can secure another job, but machines also increase the risk of injury to those workers who do manage to find employment.[221]

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[216] Parkinson & Harper, *The Law and Migrant Agricultural Workers*, 38 DICTA 341, 347 (1968). A recent decision by the United States Court of Appeals for the Fifth Circuit has held for the first time that the protective regulations regarding housing and working conditions for migratory farm workers who are recruited for domestic agricultural work by state employment systems under the provisions of the Wagner-Peyser Act of 1933, 28 U.S.C. §§ 49 *et seq.* (1964), are enforceable by the migrants when such regulations are violated. Gomez v. Florida State Employment Service, 417 F.2d 569 (5th Cir. 1969).

[217] 29 U.S.C. § 152(3) (1964). *See* Annot., 28 A.L.R.2d 391 (1953).

[218] COLO. REV. STAT. ANN. § 80-4-2(3)(a) (1963).

[219] *Id.* § 82-1-3(8)(a) (1963).

[220] *Id.* § 81-2-6(4) (1963). *See* note 142 *supra.*

[221] Several indigents particularly complained of the danger of losing fingers or even a hand in working on a potato sorting machine during the fall potato harvest in the Valley. The sorter consists of a conveyor-like series of rollers upon which is dumped the material dug up by a separate potato digger machine — potatoes, a few dirt clods, and some potato vines. The job of a potato sorter consists of standing over this conveyor-like series of rollers as the diggings pass by and manually removing all dirt clods, vines, and rotten potatoes before the remaining potatoes are dumped into trucks. In the meantime, the entire sorter is being pulled by a tractor along the length of the field.

At the same time governmental institutions have effectively excluded the agricultural worker from the protective penumbra of certain social legislation, they often have also precluded him from exercising channels in which he might affect a change in such conditions. The migrant laborer, because of his nomadic travels following the crops, is denied the right to vote not only in state elections[222] but also in presidential elections.[223] Residency requirements have also precluded migrant laborers from the benefits of welfare assistance,[224] but a Supreme Court decision has declared such requirements constitutionally infirm.[225]

Class injury inherent in the specific content of certain laws may arise in more subtle ways. For example, in the field of education, particularly among youngsters in primary grades, a persistent problem is the language difference between the Anglo teacher[226] and the Spanish-American child. Indeed, "[w]hereas most immigrants largely replaced their mother tongues with English in one or two generations, the Mexican-American has clung to Spanish for three, four, and five generations. . . . Many unfortunate classroom situations have arisen because schools and teachers have refused to recognize that Spanish is the social language of their Mexican-American students."[227] In the rural area surveyed, the native language still spoken in almost all Spanish-American homes has been appropriately described as follows: "A rustic version of Spanish is the predominant language spoken by most Hispanos in rural Colorado. It includes idioms and mismash of Spanish and English terms to the point where many Hispano school youngsters fail in Spanish language courses in school as well as English."[228] Many very young Spanish-American children know no other language but this "rustic version of Spanish." In fact, the study of the Lariat barrio reported that children of 44 families could not speak English before entering the first grade.[229] The problem arises because the laws of Colorado provide as follows:

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[222] COLO. REV. STAT. ANN. § 49-3-1 (1963), *as amended* (Supp. 1965) & (Supp. 1969). This section provides:

> Basic qualifications — (1)(a) Every person who, on the date of the next ensuing election, will have attained the age of twenty-one years, possessing the following qualifications, shall be entitled to register to vote at all general, primary, and special elections:
>
> (b) He shall be a citizen of the United States;
>
> (c) He shall be resided in this state one year immediately preceding the election at which he offers to vote, in the county ninety days, and in the precinct twenty days . . . .

[223] COLO. REV. STAT. ANN. § 49-24-1 (Supp. 1969). This section provides:

> Eligibility of new resident to vote — Any citizen of the United States who shall have attained the age of twenty-one years, who shall have resided, next preceding the election at which he offers to vote, in this state and in the county or city and county not less than two months, and in the precinct not less than fifteen days, and shall have been duly registered as required by the provisions of this article, shall have the right to vote as a new resident for presidential and vice-presidential electors.

The validity of this particular statutory provision was challenged and held valid in *Hall v. Beals,* 292 F. Supp. 610 (D. Colo. 1968), *vacated as moot,* 396 U.S. 45 (1969).

[224] The Colorado statutes setting residency requirements for welfare assistance are: COLO. REV. STAT. ANN. § 101-1-4 (1963) (Old Age Pension); *Id.* § 22-11-4 (1963) (Aid to Families with Dependent Children); *Id.* § 119-6-6 (1963) (Aid to the Needy Disabled); *Id.* § 16-2-5 (1963) (Aid to the Blind); *Id.* § 119-2-8 (Supp. 1967) (Tuberculosis Assistance); *Id.* § 82-1-3 (1963) and 82-4-7 (Supp. 1965) (General Assistance).

[225] Shapiro v. Thompson, 394 U.S. 618 (1969).

[226] Even in Costilla County, having the greatest proportion of Spanish-American population in the state, the schools employ substantial numbers of Anglo teachers.

> Instruction in the common branches of study in the public schools of this state shall be conducted through the medium of the English language. During the time that the public schools of the district in which he is resident are in session, no child of school age who has not completed the eighth grade shall be permitted to attend any school where the common branches of study are not taught through the medium of the English language.[230]

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[227] Bernal, *Anita Insists . . . I am Mexican-American,* 58 TODAY'S EDUCATION 51 (May, 1969). The following is a particularly poignant example from this same article of an "unfortunate classroom situation":

> *"Traes un lapiz?"* Ector had leaned over to Juan for a pencil. "I've warned you about speaking Spanish in my class," the teacher said sharply. "Go see the vice-principal right now, Ector. I can't have any more of that murmuring in Spanish."
>
> Mrs. Jones was irritated. Too many of her students kept lapsing into Spanish. There was a school policy against the use of Spanish and she had a vague idea that there was a law against speaking Spanish in the schools of Texas.
>
> Ector, a six-foot varsity tackle, was active in all school activities and popular with his peers.
>
> "I didn't do anything wrong," Ector kept repeating to himself as he made his way to the office. "I get A's in Spanish class but when I use Spanish to whisper to a friend in Mrs. Jones' room, I get sent to the office."
>
> Ector arrived at the vice-principal's office. After explaining why he was there, Ector sat through a 15-minute lecture on why it is very American to speak English.
>
> Mr. Neill's lecture, which he had often delivered before, mentioned the vague law that prohibited the use of the Spanish language in the schools.
>
> "Well, Ector, you can take three licks and go back to class or go home and bring your parents," Mr. Neill stated after the lecture.
>
> "I know I'm as good an American as he is," Ector thought to himself. "My brother is in Vietnam and I'll probably be going, too. Why does Mr. Neill have to tell me about speaking English and being an American? I can speak it, and I was born in the United States. . . ."
>
> "Well, Ector, will it be three licks or your parents?" Mr. Neill asked.
>
> "The three licks."

Id. at 51. The three licks that Ector received is apparently mild punishment, as compared to some of the stories related by Spanish-Americans in the two sample counties.

[228] Huber, *supra* note 16, at 7, col. 1. *See also* LA RAZA, *supra* note 28, at 5-24.

[229] E. Ahrens, *supra* note 27, at 87.

[230] COLO. REV. STAT. ANN. § 123-21-3 (1963).

Therefore, even if teachers in this area wanted to teach in the idiomatic Spanish which their students could understand, the law would not permit it.

Another subtle way in which the rural poor are subjected to inequities in the law, albeit somewhat differently, is by the nonenforcement of statutory remedies. For example, the state's sanitary housing code for the protection of migrant laborers in agricultural camps is largely unenforced, causing migrant agricultural laborers to live in somewhat squalid conditions.[231]

2. Denial, Reduction, or Termination of Welfare or Other Benefits

The class injury which results when the rural poor face governmental functionaries which dispense public assistance can be substantial and pervasive. For example, the incidence of persons receiving welfare, social security, or food stamp benefits in Conejos and Costilla counties is very high in comparison to the total population.[232] Over half of all indigents surveyed were receiving or had just recently received some form of benefits, indicating that denying, terminating, or reducing such benefits would invoke hardship.

Yet a substantial proportion of subjects interviewed had suffered just such injuries. The explanations given for the actions by the appropriate governmental agencies varied. Several elderly persons were denied old age pension benefits because they were unable to adduce accurate proof of their ages, since no record was made at the time of their births. Insufficient proof of physical disability for Aid to the Needy Disabled, family earnings purportedly being too high for continuance or inauguration of AFDC payments, and untimely application for food stamps[233] were mentioned, among others. Several of the indigents attempted, a few successfully, to remedy what they believed to be unjust agency action by informal methods. Confidants were sometimes helpful in encouraging the welfare office to reexamine its previous position vis-a-vis the indigent seeking benefits. None of those injured sought legal advice from an attorney, apparently on the assumption that the welfare agency had the law on its side. Sporadic instances of direct and interpersonal dealing with the welfare caseworkers or director were somewhat fruitful for some indigents.

The most disconcerting aspect of the welfare program in the two counties studied was the manner in which agency decisions were made and indigent applicants were informed. The director of the welfare office in one county, for example, has held the position for over two decades. She is Spanish-American, a member of the community's establishment class, distrusted and disliked by most, and excoriated and castigated by a few impoverished residents of the town. She is a domineering woman who runs the county welfare office in autocratic fashion and who very obviously views it as her personal fiefdom. Extensive regulations and interagency directives serve not only to define the boundaries of the decisionmaking process but also to camouflage the director's personalized discretion. Possessing a thorough knowledge of the rules and regulations governing qualifications for welfare disbursements, the director is able to justify to an applicant almost any agency action taken. As is true in the field of consumer injury, the poor do not have adequate knowledge, nor, at least with this particular director, do they even have access to the source of such knowledge — the rules and regulations themselves.[234] Without such access, many of the indigents interviewed who had dealt with this county's welfare office assumed that subjective agency decisions were final and legal. Virtually none of the decisions are appealed to the state welfare department.[235] Further, procedural due process is apparently ignored when a recipient of welfare aid has his claim denied or his benefits reduced or terminated: none of the indigents with this experience reported any objective *a priori* hearing to determine the verifiable facts and the justifiability of agency action.[236] At least one consequence of all this is that some applicants resort to prevarication and deceit in order to bypass the bureaucratic wasteland and subjective discretion of the welfare office in that county, according to one of the office's caseworkers.

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[231] *See* notes 213-15 *supra* and accompanying text.

[232] *See* notes 96-103 *supra* and accompanying text.

[233] *See* note 101 *supra*.

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[234] In the summer of 1968, a VISTA volunteer working in the community stated that he had requested the volume of welfare rules and regulations for brief examination, but the director had pre-emptorily denied the request. A young caseworker in the office added that he had removed the volume overnight without the director's knowledge. She later discovered this fact and severely castigated him, saying that the volume was never to be removed from the office again. The volume was then stashed away for safekeeping in her private office. Two of the student researchers for this study went to the director's office, asked to examine the volume, and were denied the request. The director was told that the Colorado Open Records Act, COLO. REV. STAT. ANN. § 113-2-1 to 113-2-6 (Supp. 1969), then recently passed by the General Assembly, applied to the requested writings and that the law provides that "all public records shall be open for inspection by any person at reasonable times . . . ." *Id.* § 113-2-1 (Supp. 1969). She expressed no knowledge of the law, evinced unmistakable distrust of the gringo interlopers, and steadfastly declined to part with the volume for even a moment, suggesting instead that the two obtain a copy of the rules and regulations from the state welfare headquarters in Denver. These events raise a serious question whether any local indigent would be allowed to examine the rules and regulations in order to double check the authority which allegedly justifies the agency action adverse to the indigent's application for or continuation of benefits.

[235] No appeals were lodged with the State Hearing examiner for the years 1966 and 1967 from either county. In 1968, 3 were lodged (with 2 subsequently withdrawn); in 1969, 1 was lodged (and subsequently withdrawn) from Conejos County. No appeals were lodged from Costilla County. Conversation with Donald Fisher, Hearing Officer, State Welfare Office, Denver, Colorado. Appeals to the state welfare department are authorized by statute. COLO. REV. STAT. ANN. § 101-1-13 (1963) (Old Age Pension); *id.* § 22-11-9 (1963) (AFDC); *id.* § 119-6-16 (1963) (Aid to the Needy Disabled); *id.* § 119-7-6(2)(a) (Supp. 1965) (Medical Assistance for the Aged); *id.* § 16-2-14 (1963) (Aid to the Blind); *id.* § 119-2-13 (1963) (Aid to Indigent Tuberculars).

The present need is for an effective counterbalance to any unbridled subjective discretion by the director in agency decisionmaking. The welfare directors are not necessarily guilty of misfeasance in the performance of their duties. Rather, pressed by serious poverty conditions in the two-county region and limited by funding available from county, state, and federal sources, some close factual decisions are apparently resolved against the applicant simply because the coffers of the welfare state are not bottomless.[237] Class injury occurs when the eligibility of indigents is not open to disputation on the facts and yet benefits are denied by "stretching" the well-hidden rules and regulations. At the least, decisions should comport with agency rules and regulations, and, as the experience of legal aid lawyers elsewhere in the country has shown,[238] some of the rules and regulations may be directly attacked as being at variance with the larger scheme of constitutional rights for the impoverished class. Scrutiny or the threat of scrutiny of welfare case decisions by competent attorneys could well dampen personalized discretion and enhance agency objectivity. Hence, this field of class injury is a particularly fertile one for legal aid.

3. The Administration of Criminal Justice

When an indigent is charged with a criminal offense, his adversary becomes the state's formal legal system, negating informal problem-solving processes and forcing reliance on institutionally developed procedures which are designed to protect the rights of suspects. When the procedures fail to fully protect the rights of indigents, then class injury occurs, according to the definition of this study. In the counties investigated, informal and subjective procedures were found to exist which did not fully protect the rights of suspects, most of whom were indigent,[239] creating problems for the rural poor and causing them to be on a less than equal basis with their institutional adversary.

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[236] Federal law requires that a state's welfare plan "provide for granting an opportunity for a fair hearing before the State agency to an individual whose claim for [old-age or medical] assistance is denied or is not acted upon with reasonable promptness; . . . ." 42 U.S.C. § 302(a)(4) (1964). Similar provisions apply to, among others, AFDC benefits, *id.* § 602(a)(4) (Supp. IV, 1969), and assistance to the permanently disabled, *id.* § 1352(a)(4). Even though the Colorado law is in conformity with these requirements, the administrative "appeal of right" has remained largely unused. In Colorado for a recent 12 month period, only 165 persons out of 12,611 whose public welfare benefits were terminated even requested fair hearings. Wickham, *Public Welfare Administration: Quest for a Workable Solution,* 58 GEO. L.J. 46, 70 (1969). *See also* Note, *Withdrawal of Public Welfare: The Right to a Prior Hearing,* 76 YALE L.J. 1234 (1967).

[237] The director of the Alamosa Civil Rights office reported that he has little influence in assisting indigents who ask his aid in obtaining welfare assistance in Alamosa County, simply because the Alamosa welfare director has told him bluntly that there are just not enough funds to put all who need assistance on the welfare rolls.

[238] For a monthly listing of the more significant cases filed by legal aid attorneys in California, including California Rural Legal Assistance, during the years 1966 through 1968 see generally I-II CEB LEGAL SERVICES GAZETTE 1-367 (1966-68). For a brief summary of the guidance which the Center on Social Welfare Policy and Law, located at Columbia Law School, has given to judicial and administrative attacks on specific areas of public assistance law, see Note, *Beyond the Neighborhood Office — OEO's Special Grants in Legal Services,* 56 GEO. L.J. 742, 756-60 (1968).

For example, the practice of assigning counsel in indigent criminal cases in the district court is not found at all in the misdemeanor cases in the county courts.[240] While this situation is not unique to these courts, it is the observation of the student researchers that the informality and subjectivity involved in litigating such cases in the counties surveyed was more severe. At least a partial explanation for this observation is the fact that the district attorney's office, unlike most other areas, is rarely represented in the two county courts. Consequently, the county judge — a layman in both counties — becomes prosecutor, defender, and jury. The typical courtroom scene for a misdemeanor "trial" (which usually involved a traffic violation) was observed as follows: A law enforcement officer — city policeman, county sheriff's deputy, or state highway patrolman — arose and presented to the judge the evidence and circumstances concerning the charge against the defendant. The defendant then arose and presented his side of the controversy. All relevant evidence was allowed; no one mentioned anything called a "hearsay" rule. The judge questioned both parties as to the facts. The officer and the defendant heatedly argued on the same matter, with the judge vainly attempting to maintain proper judicial decorum. The judge finally accepted at least the principal claims of one side — the officer's — and passed judgment on the defendant.

The county judges who were interviewed seemed to be quite aware that injustice was wont to creep into their courtrooms. One expressed the view that a number of indigents who had been found guilty would have been acquitted with the aid of counsel. For many of the poor, the defense of a charge in these county courts will be their only experience, if at all, with the criminal justice system. As presently existing, a wrongfully charged party may well be left with a bitter taste of injustice in his mouth — "the policeman is always right in a court of law, even when he's wrong."

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[239] The majority of criminal charges filed in district courts in rural areas of Colorado are against indigents who are unable to afford an attorney. This was the collective conclusion of district judges who were interviewed or who replied to the attorney questionnaire. One district judge in the San Luis Valley (the six counties in the San Luis Valley constitute the Twelfth Judicial District of Colorado which has two judges) estimated the proportion of indigents to be between 75 and 90 percent of all criminal cases. And, at least in the sample counties surveyed, a very high proportion of defendants on district court criminal dockets are Spanish-surnamed. An examination of the dockets in these two counties revealed that almost 90 percent of the defendants were Spanish-surnamed, over three-fourths of these pled guilty to their charges, and all but a very few of the remainder were subsequently found guilty after a brief trial. The two most common crimes with which Spanish-surnamed individuals were charged were theft and malicious Mischief. A district judge estimated that 99 percent of all indigent Spanish-Americans charged with crimes before him are found guilty or plead guilty. For the period 1952-1962, there were 305 Colorado State Penitentiary inmates sentenced from the San Luis Valley. Of this total, 222 or 72.8 percent were Spanish-surnamed.

[240] For the years 1965-67, neither Conejos nor Costilla counties paid out any sums for assigned counsel except in the district court. Both county judges, as expected, stated that they had never appointed counsel in their courts.

This informality and subjectivity does have one mildly redeeming feature for indigent defendants who are in fact justifiably determined to be guilty as charged: The county judges of both Conejos and Costilla counties tend toward leniency in meting out punishment. For example, violations that are invariably met with $15-$30 fines in the Denver County Courts are met with fines of $5-$10 at the most in these county courts. Several factors are apparently responsible for this leniency. First, the system of criminal justice in the county courts is highly subjective; that is, given the sparse population and the large circle of acquaintances and interrelatedness of families, it is much more common for all parties involved in a criminal violation to know all other parties. Thus, the judge is more likely to mete out punishment based upon his personal knowledge of the defendant. Second, it seems to be a strong feeling with the two county judges that a jail sentence is not a viable alternative to a fine, so that if the defendant were unable to pay a high fine, a jail sentence would not be an effective means to curry respect for the law. Therefore, it is believed better to levy a small fine which will, in any case, hurt the pocketbook of the indigent than to send him to jail. Finally, the lesser fines are thought to be proportionately effective, considering the lesser standard of living in the Valley due to a depressed economy. But the absence of any set scale of fines established by all judges in the Valley still results in a highly personalized system of criminal justice.

CONCLUSION

The formal legal structure remains largely alien to the poverty class of Conejos and Costilla counties. Few indigents who were interviewed in the two counties had ever seen an attorney concerning a legal problem, and fewer still had ever been in court. The manifest evidence is that the poor become entwined in formal legal processes only when they are shocked into the system. Legal assistance is only sought as a last-gasp defensive measure when the indigent himself is under formal legal pressure from some outside party or force. Hence, the poor are invariably the defendants in court cases. They are sued; they rarely sue. They are charged with crimes; they are rarely the complaining parties. Records from courts of both counties clearly reflect that character. In the district court, Spanish-surnamed persons were not parties-plaintiffs in any actions during the year 1967 other than divorce suits, one foreclosure action, and two quiet title suits; in the county courts, a few petitions to change the plaintiff's name appeared. Many attorneys reported, either on returned questionnaires or during personal interviews, that the legal problems brought to them by indigents require for the most part defensive action, and that such problems have usually been exacerbated by inaction to such a level that any remedy beyond camouflaged capitulation is difficult to obtain at best.

Poverty class members in the two counties do not utilize the law and the legal processes as *positive* tools to improve their lot individually or to correct manifest class injustice.

> [A]n essential ingredient of legal competence is a propensity to take action. This requirement is especially critical in the American legal system since a major assumption built into the operating philosophy and structure of our legal institutions, particularly those concerned with civil matters, is that aggrieved parties will take legal initiative. This assumption may hold for the rich under most circumstances; there is considerable reason to believe that it does not hold for the poor. Such data as exist suggest that the poor suffer many legal wrongs but that they rarely attempt to redress their grievances through law.[241]

Various explanations have been advanced — by legal commentators,[242] by community leaders interviewed, and by the poor themselves — for this distinct failure of indigents to utilize attorneys and courts. There is no one single factor. The high cost, or the fear thereof, that the contemporary system demands to invoke the full protective gamut of legal machinery is a prime prohibitive factor. But it is just one of many. Failure by indigents to take cognizance of the legal character of a disturbing problem, paucity of resident attorneys in the area surveyed, long distance to the nearest attorney, hesitancy due to ethnic, language, or class barriers, and other factors certainly compound the assumed simplicity of the "no-money" explanation. Moreover, some explanations are uniquely individualized to the particular circumstances in which an indigent may find himself.

All of the explanations for failure by the rural poor to resort to formal legal institutions are geared to an analysis at that point in time when an indigent has allowed his legal problem to swell to critical proportions. If, at that point, a particular indigent fails to consult an attorney, the chances are very strong that his problem will be resolved on terms adverse to his own interests by imposition from the other party. The empirical data from the survey reveal that many indigents actually resolve their legal problems prior to that critical point where delay — the instinctive and natural response to a legal problem — can no longer be tolerated by adverse forces and all will be lost without the aid of an attorney and little will be salvaged in any event. An informal and unstructured system of local confidants, the present remnants of a Spanish-American cultural imperative, has been surprisingly effective in aiding the rural poor to resolve their law-related problems without the intervention of formal legal institutions. Many more indigents have successfully ameliorated if not resolved such problems by direct personal confrontation and dealing with the irritating source.

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[241] Carlin, Howard & Messinger, *supra* note 148, at 71. *See also* D. CAPLOVITZ, THE POOR PAY MORE 171-72 (1963).

[242] *See, e.g.*, Willging, *Financial Barriers and the Access of Indigents to the Courts*, 57 GEO. L.J. 253 (1968). *See also* AMERICAN BAR FOUNDATION, PUBLIC PROVISION FOR COSTS AND EXPENSES OF CIVIL LITIGATION (1966); Carlin, Howard & Messinger, *supra* note 148.

Significant legal problems, however, are notably immune from informal solution. These are called class injuries, since by design or by effect, they are limited to common occurrence within the poverty class and are engendered or created in the first instance by the establishment class, individually or collectively. For example, the poor woman who is denied AFDC benefits with a cursory and peculiarly vague explanation; the man who is dunned by a nonlocal collection agency when the house siding he was persuaded to purchase has never been installed; the migrant farm laborer who is expected to lodge his working family in a woefully inadequate, unsanitary, and decrepid house provided by an unconcerned farmer interested only in profit margins; the indigent mother of seven who takes a job as a potato sorter during the harvest season in order to bring in desparately needed money and who receives a badly mangled hand as the result of defective farm equipment only to discover that workmen's compensation is unavailable; and the indigent charged with a felony cannot benefit materially from informal processes. It is in the area of class injury that legal aid and affirmative legislative action would prove to be most beneficial to the rural poor. But, with the single exception of the criminal justice system, the research data indicate that class injuries remain largely unremedied. And, what is more reproving, the clearly expressed attitude of the substantial majority of community leaders surveyed, constituting a fair sample of the indigenous establishment class, was that the ethical duty of legal largesse to the poor at public expense was fully satisfied by assigned counsel in felony cases. Most attorneys in the San Luis Valley were quite willing to render their "share" of legal aid to indigents entering their offices. But, for reasons previously mentioned, many members of the rural poverty class are quite reticent about consulting an attorney, and, in turn, most of the attorneys are sublimely oblivious of the extent and the character of legal needs of the rural poor which are never laid bare in the sanctum of a law office. Furthermore, too few attorneys evinced any inclination to take up the banner of class injury and storm the bastions of the establishment. Such an assault would most assuredly render needed service, but just as assuredly it would realistically threaten the economic security of the attorney by biting the hand that feeds him and would cast aspersions upon his standing among the pillars of the community — the businessmen, landowners, well-to-do ranchers, doctors, government officials, politicians — in short, the establishment.

In summary, then, the empirical evidence garnered by this study points to a definite need for free legal services for the rural poor in the area studied. The occurrence of two recent events may in due time alleviate much of that need. The Office of Economic Opportunity approved a sizeable grant in July of 1969 which authorizes the establishment of a legal aid office in Alamosa, among other rural locations in the state of Colorado.[243] In the criminal area, the Colorado General Assembly passed a bill during its 1969 session including a section creating a statewide public defender's office which began operations in January of 1970,[244] to "replace the existing local public defenders and court appointed counsel."[245]

It is still too early to gauge the effectiveness of the new legal aid and public defender systems in the region surveyed. It is fairly certain, however, that the rural bar of Colorado will not be unanimous in approving the new institutions. From the attorney questionnaire, 55 percent of the respondents were opposed to the establishment of free legal aid in their particular community, and the opinions expressed in personal interviews by members of the San Luis Valley bar were equally split. Opposition centered upon the belief that legal aid was not necessary, that it couldn't work because of staffing and funding hurdles, or that fiery radicals would come into a small community, indiscriminately attack established practices, generate community dissension, and create one large and continuous brouhaha. Proponents, including the directors of the Alamosa offices of the Civil Rights Commission and the Colorado Migrant Council, cited the pressing need. One attorney, upon learning of the OEO grant, expressed the view that he could now, with impunity and no deviation from ethical norms, turn away all indigent cases and send them packing to the legal aid office. Only a bare majority of attorneys responding to the questionnaire — 59 percent — had favored a local public defender system, and those in opposition were generally the same ones who opposed legal aid.

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[243] Office of Economic Opportunity, Grant No. C.G. 6055 (1969).

[244] Colo. Rev. Stat. Ann. §§ 39-21-1 to 5 (Supp. 1969). *See also* note 153 *supra.*

[245] Colorado State Administrator Judicial Personnel and Fiscal Administration: Preliminary Report 1 (May 1969). The public defender responsible for the San Luis Valley has his office in Alamosa and has a staff of one attorney, one investigator, and two secretaries. Conversation with Harry O. Lawson, Judicial Administrator, State of Colorado.

Another and equally significant conclusion is compelled by the gathered evidence. The informal "legal" system which is employed to varying degrees by indigents of the two counties can be a viable adjunct to effective legal aid in the Valley. Resort to these informal processes should be positively encouraged and supported, where appropriate and not plainly adverse to the substance or spirit of the law. The local confidants can particularly serve a valuable function by screening problems at an informal stage, referring to legal aid only those which are suited to resolution by that manner. To be sure, confidants will handle law-related problems brought to them in ways which may not insure the full protection or vindication of the legal rights and remedies of the indigent. But to discourage and discredit the confidant institution on that account alone would engender greater problems: Either more problems of indigents would be caught up in the adversary legal process, thereby widening the hiatus of distrust and animadversion between the establishment and the poor, or the poor would suffer more legal wrongs without recourse. Either result is probably less satisfactory than the ad hoc, spasmodically successful, yet personal, informal, and compromising processes of extra-legal problem resolution which now exist.

The confidant as legal scrivener performs a valuable function. Theoretically, the practice is fraught with the danger of legal error, but in practice that danger appears more imaginary than real, as the Colorado Supreme Court once recognized.[246] If not encouraged, this practice should at least not be discouraged until and unless shown to be a genuine hazard to the legal interests of unsuspecting indigents.

The legal problems of the rural poor are not greatly disparate from those of the urban poor.[247] The differences are not in substance but rather in degree; landlord-tenant problems, for example, are much less frequent and not as emotionally vociferous in rural communities as in the great urban centers, and, in turn, problems attributable to ownership of real property, whether in substantial quantities or not, are more frequent among the rural poor. The really significant difference is one perhaps not endemic to the culturally parochial region studied. [248] That difference is in the methods by which the similar legal problems are handled and resolved by the rural poor — through the informal "legal" system.

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[246] *See* text accompanying note 169 *supra*.

[247] *Compare*, Duke Study, *supra* note 9 and the present study *with* Peoria Survey, *supra* note 8, and Sykes, *supra* note 7.

[248] Although not directly considered and discussed in their article, the authors of the Duke Study, Note, *supra* note 9 make frequent reference to the use by North Carolina indigents of the problemsolving technique denominated herein as indigent self-help and interpersonal dealing

APPENDIX

ATTORNEY QUESTIONNAIRE

(1) What Colorado State Judicial District are you practicing in?____________

(2) What is the nature of your present legal practice?
Please check one.
a. Sole practitioner ____________
b. Partnership — 2 members ____________
c. Partnership — 3 members ____________
d. Partnership — 4 members ____________
e. Partnership — 5 or more members____________
f. Retired or semi-retired ____________

(3) Have you been or are you presently holding a public office?
If so, please specify years held.
a. District judge ____________
b. County judge ____________
c. District attorney ____________
d. Deputy district attorney ____________
e. City attorney ____________
f. County attorney ____________
g. Other (please specify) ____________

(4) In how many cases have you acted as court appointed counsel in criminal matters involving indigents in the past three years?
Number
1967 ____________
1966 ____________
1965 ____________

How many of these cases actually went to trial?
1967 ____________
1966 ____________
1965 ____________

Does your schedule permit you to spend adequate preparation time for assigned cases?
YES____________ NO____________

(5) In your opinion, is compensation to the attorney for assigned counsel cases adequate?
YES____________ NO____________

(6) Is the assignment of counsel for indigent defendants in your judicial district objectively rotated among the available lawyers in the area?
YES ____________ NO____________

(7) Under what circumstances are the attorneys in your area able to avoid accepting court appointed cases?

(8) Would you favor the establishment of a public defender program in your judicial district?
YES____________ NO____________
COMMENT:______________________________
____

IN THE FOLLOWING QUESTIONS, PLEASE LIMIT YOUR ANSWERS TO CASES AND LEGAL SERVICES *OTHER* THAN COURT APPOINTED CRIMINAL CASES.

(9) How much time do you presently devote in your legal practice to legal services to indigents?

10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

(10) When providing legal services to indigents, which of the following general categories would you say you apply when considering fees? Please check one.

a. Always charge the recommended minimum fee. __________
b. Generally charge the minimum fee, but will sometimes charge a lower fee. __________
c. Always charge at least *some* fee. __________
d. Sometimes charge a small fee, sometimes nothing, depending upon clients ability to pay. __________
e. Always charge nothing. __________

(11) If you charge fees for legal services to indigent clients:

a. What percentage of the clients pay the total bill? __________
b. What percentage make only a partial payment? __________
c. What percentage never pay? __________

(12) Considering the total amount of fees charged to indigent clients, do you receive in collection:

a. More than you expected? __________
b. About as much as you expected? __________
c. Less than you expected? __________

THE FOLLOWING QUESTIONS DEAL WITH YOUR OPINIONS REGARDING LEGAL SERVICES AND THE POOR.

(13) In your community, do poor people with legal problems generally tend to come to your firm:

a. More than to other attorneys in the community? __________
b. About as often as to other attorneys in the community? __________
c. Less than to other attorneys in the community? __________
COMMENT: ______________________________
____

(14) Do the poor persons in your community generally tend to go to any particular attorney or firm?

YES__________ NO__________

If yes, please explain. ______________________________
____
____

(15) From your experience in your community, who do the poor people *first* seek out when confronted with a legal problem?

a. Lawyer __________
b. Minister or Priest __________
c. Relative or friend __________

d. Police ____________
e. Social Worker ____________
f. Other (please specify)______________________________
____
____

(16) What percentage of indigent clients who come to your office are referred to you by
a. Lawyers?__________%
b. Other persons in the community?__________%

(17) The following is a list of legal problem areas which the poor may or may not confront in your community. We would like to know if in your practice or experience in the community you think the poor people in your community are faced with these problems. In other words, we want to know the types of problems with which the poor people who come to you or other attorneys are faced. If a substantial number of indigents have encountered a problem area, please write an *S* in the space provided. If only a few, please write *F;* if none, please write *N.*

a. Wage collection problems (garnishment, employer not paying full wages, etc.). ____________
b. Welfare benefit collection problems (Unemployment compensation, medicine, A.D.C., general county assistance, etc.) ____________
    1. Unable to get on welfare rolls. ____________
    2. Unable to afford an appeal from welfare board decision. ____________
    3. Forced to accept unsuitable employment in lieu of welfare payments being continued. ____________
c. Purchase of unsatisfactory goods with cash. ____________
d. Purchase of unsatisfactory goods on installment credit____________
    1. From local businesses. ____________
    2. From traveling salesmen. ____________
    3. From discount stores. ____________
    4. From national chain store outlets. ____________
e. Default on installment payments and repossession of goods purchased. ____________
f. Default on payment of debt. ____________
g. Uncollectibility of money loaned by indigent to another. ____________
h. Housing problems.
    1. Landlord — tenant problems (no written lease, disrepair of dwelling, eviction, etc.). ____________
    2. Discrimination in buying house. ____________
    3. Drafting deeds and other papers relating to property. ____________
    4. Other (please specify)______________________________
    ____
    ____
i. Martial problems.
    1. Divorce. ____________

2. Child custody. ____________
3. Support and alimony payment problems. ____________
4. Wife-beating. ____________
5. Other (please specify)____________________________________
____
____

j. Job injuries and workmen's compensation payments. ____________
k. Discrimination in voting. ____________
l. Job discrimination. ____________
m. Estate planning and writing wills. ____________
n. Law enforcement problems.
  1. Differential law enforcement, discrimination by local police or sheriff's office in enforcing the law.____________
  2. Employment of attorneys for criminal cases other than felonies. ____________
  3. Inability to post bail. ____________
  4. Probation and other parole problems. ____________
o. Other (please specify)____________________________________
____
____

(18) What would you say are the *five* most prevalent legal problems of the poor people in your community?
Please rank them.
1.____
2.____
3.____
4.____
5.____

(19) From your experience, what are the legal problem areas which the poor people tend *not* to recognize as legal problems?
1.____
2.____
3.____

(20) In your experience, what are the legal problem areas which the poor people *do* generally recognize as legal problems?
1.____
2.____
3.____

(21) Would you say that those indigents who do not live in a community which has a lawyer, that is, those who live in areas that are distant from an attorney's office, are more likely *not* to come to an attorney when they have a problem *because* of the distance?
YES____________ NO____________

(22) Would you favor the establishment of a Legal Aid Clinic in your community or area?
YES____________ NO____________

(23) What problems do you see in establishing a Legal Aid Clinic or a Public Defender's Office, or a set-up that combines both in your community or area?

IF YOU HAVE ANY ADDITIONAL COMMENTS OR SUGGESTIONS RELATING TO THE SUBJECT MATTER OF THIS QUESTIONNAIRE, PLEASE ATTACH THEM.

THANK YOU FOR YOUR TIME AND INTEREST.